

TITLE - CORPORATE SUSTAINABILITY AND THE BUSINESS' ENVIRONMENT: AN EVALUATION OF THE NIGERIAN OIL INDUSTRY

NAME - OMOTUYI OPEYEMI YETUNDE

STUDENT NUMBER – OMTPE001

QUALIFICATION – LL.M DEGREE (COMMERCIAL LAW)

SUPERVISOR – DR ADA ORDOR

WORD-COUNT – 24, 485

Research dissertation presented for the approval of Senate in fulfilment of part of the requirements for the LL.M degree in approved courses and a minor dissertation. The other part of the requirement for this qualification was the completion of a programme of courses.

I hereby declare that I have read and understood the regulations governing the submission of LL.M degree dissertations, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.

.....

The copyright of this thesis vests in the author. No quotation from it or information derived from it is to be published without full acknowledgement of the source. The thesis is to be used for private study or non-commercial research purposes only.

Published by the University of Cape Town (UCT) in terms of the non-exclusive license granted to UCT by the author.

ACKNOWLEDGEMENTS

My appreciation goes to Professor Alan Rycroft, thank you so much for this idea.

My heartfelt gratitude also goes to my supervisor Dr Ada Ordor, thank you for your support, assistance and encouragement throughout the process of writing this dissertation.

I also express my sincere appreciation to my husband, thank you for making this dream a reality.

University of Cape Town

ACRONYMS

API	American Petroleum Institute
APPEA	Australian Petroleum Production and Exploration Association
CS	Corporate Sustainability
CSR	Corporate Social Responsibility
DPR	Department of Petroleum Resources
EAP	Environmental Assessment Practitioner
EC	European Community
EIA	Environmental Impact Assessment
EMAS	Eco-Management and Audit Scheme
EMP	Environmental Management Plan
EMS	Environmental Management Systems
EU	European Union
FEPA	Federal Environmental Protection Agency
FME	Federal Ministry of Environment
ICC	International Chamber of Commerce
ISO	International Standards Organization
MNC	Multinational Corporations

NDDC	Niger Delta Development Commission
NDEMS	National Database on Environmental Management Systems
NDES	Niger Delta Environmental Survey
NDR	Niger Delta Region
NIS	Nigerian Industrial Standards
NOSDRA	National Oil Spill Detection and Response Agency
NPE	National Policy on Environment
OECD	Organization for Economic Co-operation and Development
OGP	International Association of Oil and Gas Producers
PIB	Petroleum Industry Bill
SABS	South African Bureau of Standards
SON	Standards Organization of Nigeria
SPDC	Shell Petroleum Development Company
UKOOA	United Kingdom Offshore Operators Association
UN	United Nations
UNEP	United Nations Environment Programme
UNGC	United Nations Global Compact

ABSTRACT

Contemporary trends in corporate governance emphasize the stakeholder inclusive approach to corporate governance. Company managers are required to consider stakeholders and take the interests of stakeholders into account in their decision making processes. The stakeholder inclusive approach is considered to be in the best interest of a company in the long run. It enhances the opportunity of a company to be in operation over a long term. The opportunity of a company operating over a long term is referred to as 'corporate sustainability'. The concept of corporate sustainability encompasses three important aspects which include environmental responsibility, social equity and economic profitability. However, in relation to oil companies, the concept of corporate sustainability is predominantly about environmental responsibility. This is as a result of the negative and huge impact of their exploration activities on the environment.

Therefore, this research examines the framework for and discusses internationally acceptable mechanisms that may improve corporate environmental responsibility of operators in the Nigerian oil industry, hence, their sustainability. The research also discusses mechanisms for the enforcement of corporate environmental responsibility in the Nigerian oil industry. This research concludes with some recommendations for corporate environmental responsibility and sustainability in the Nigerian oil industry.

TABLE OF CONTENTS

Acknowledgement	i
Acronyms	ii
Abstract	iv
Table of Contents	v

CHAPTER ONE - INTRODUCTION AND BACKGROUND

1.1 Introduction	1
1.2 The Concept of Corporate Sustainability	1
1.2.1 Sustainable Development and Corporate Sustainability	1
1.2.2 Corporate Social Responsibility and Corporate Sustainability	4
1.2.3 Stakeholder Theory and Corporate Sustainability	6
1.2.4 Corporate Accountability and Corporate Sustainability	7
1.3 Why Sustainability	8
1.4 The Business' Environment	9
1.5 Problem Statement	9
1.6 Research Questions	11
1.7 Objective and Significance of Study	12
1.8 Methodology	13

1.9 Chapter Breakdown	14
CHAPTER TWO – LEGAL AND REGULATORY FRAMEWORK FOR CORPORATE ENVIRONMENTAL RESPONSIBILITY IN THE NIGERIAN OIL INDUSTRY	
2.1 Introduction	15
2.2 Regulatory Framework	17
2.2.1 Federal Environmental Protection Agency Act	17
2.2.2 The Petroleum Act	18
2.2.3 The Oil Pipelines Act	19
2.2.4 Environmental Impact Assessment Act	21
2.3 Institutional Framework	22
2.3.1 The Federal Ministry of Environment	22
2.3.2 The National Oil Spill Detection and Response Agency	23
2.3.3 The Department of Petroleum Resources	24
2.3.4 The Niger Delta Development Commission	25
2.4 Corporate Framework	26
2.5 The Petroleum Industry Bill	28
2.6 Conclusion	31

CHAPTER THREE – INTERNATIONAL STANDARDS AND GUIDELINES ON CORPORATE ENVIRONMENTAL RESPONSIBILITY

3.1 Introduction	32
3.2 The Concepts of Corporate Responsibility and Accountability	33
3.2.1 Corporate Environmental Impact Assessment	34
3.2.2 Corporate Environmental Management Systems	38
3.2.3 Corporate Environmental Monitoring and Auditing	41
3.2.4 Corporate Environmental Performance Evaluation	43
3.2.5 Corporate Environmental Reporting	44
3.3. Conclusion	46

CHAPTER FOUR – TOWARDS CORPORATE ENVIRONMENTAL RESPONSIBILITY IN THE NIGERIAN OIL INDUSTRY

4.1 Introduction	47
4.2 Environmental Impact Assessment	48
4.3 Environmental Management Systems	57
4.3.1 Environmental Policy, Objectives and Targets	58
4.3.2 Planning	59
4.3.3 Implementation and Operation	60
4.3.4 Checking and Corrective Actions	63

4.3.5 Management Review	65
4.4 Enforcement of Environmental Impact Assessment and Environmental Management Systems	68
4.4.1 Access to Information	68
4.4.2 Public Participation	69
4.4.3 Access to Justice	71
4.4.4 Economic Instruments	72
4.5 Conclusion	73
CHAPTER FIVE – RECOMMENDATIONS AND CONCLUSION	
5.1 Recommendations	74
5.2 Conclusion	80
Bibliography	105

CHAPTER ONE: INTRODUCTION AND BACKGROUND

1.1 INTRODUCTION

Corporate governance refers to the way in which companies are governed, and to what purpose they are governed. Every company should have set objectives and a company should be governed in a manner aimed at the achievement of those objectives. Thus, corporate governance is concerned with practices and procedures for ensuring that a company is managed in a manner that it achieves its objectives.¹ Sustainability, which is continued operation over the long term, is one of the objectives of every company. Various corporate governance codes in diverse jurisdictions have emphasized the importance of sustainability issues in corporate governance. For instance, the South African 'King Report' places great emphasis on sustainability. The report refers to sustainability as the primary moral and economic imperative for the century.²

1.2 THE CONCEPT OF CORPORATE SUSTAINABILITY

The term 'corporate sustainability' does not have a specific definition. It has however been suggested that the concept combines elements of some established concepts such as sustainable development, corporate social responsibility, stakeholder theory, and corporate accountability.³ Thus, in order to fully understand the meaning of the concept of corporate

¹ (2012) Chartered Secretaries Southern Africa: "Corporate Governance in Southern Africa", p 4.

² South Africa: King Report on Corporate Governance for South Africa, 2009.

³ (2003) Mel Wilson: "Corporate Sustainability: What Is It and Where Does It Come From?", Ivey Business Journal; <http://iveybusinessjournal.com/topics/social-responsibility/corporate-sustainability-what-is-it-and-where-does-it-come-from#.UjXBOReOC-o> [accessed August 31, 2013].

sustainability, it is expedient to understand these other established concepts and their relation to corporate sustainability.

1.2.1 SUSTAINABLE DEVELOPMENT AND CORPORATE SUSTAINABILITY

Sustainable development encompasses a more socially equitable and economic wealthy world in which the natural environment is preserved for future generations.⁴ Sustainable development has been defined as comprising of economic and social developments that protect the natural environment and social equity.⁵ In spite of the various definitions and notions of sustainable development, there is a consensus that sustainable development aims at development that promotes the best possible quality of life over an indefinite period of time which can extend to the whole world.⁶ The core idea of sustainable development was defined by the World Commission on Environment and Development (The Brundtland Commission) as ‘development which meets the needs of the present without compromising the ability of future generations to meet their own needs’.⁷ Consequent upon the Brundtland Report, the imperatives of sustainable

⁴ (2002) Thomas Dyllick and Kai Hockerts: “Beyond the Business Case for Corporate Sustainability” *Journal of Business Strategy and the Environment*, vol. 11, p 130; <http://onlinelibrary.wiley.com/doi/10.1002/bse.323/pdf> [accessed July 30, 2013].

⁵ (2000) Dexter Dunphy et al: “Sustainability: The Corporate Challenge of the 21st Century” p 22.

⁶ (2005) Schaltegger and Burritt: “Corporate Sustainability” *The International Yearbook of Environmental and Resource Economics-A Survey of Current Issues* (Henk Folmer and Tom Tietenberg, eds.) p 187; www.books.google.co.za/books?isbn=1845422066 [accessed July 30, 2013].

⁷ (1987) World Commission on Environment and Development (WCED): “Our Common Future”; www.un-documents.net/ocf-02.htm#1 [accessed July 30, 2013].

development was accepted at the United Nations Conference for Environment and Development.⁸

Sustainable development consists of three important aspects which include environmental protection, social equity, and economic profitability. These three aspects, referred to as the 'triple bottom line',⁹ are integrated into a single perspective referred to as sustainable development.¹⁰ Whereas in the past, local authorities were the major proponents of sustainable development, the focus is now on companies as major actors.¹¹ Companies are expected to measure their success not only by their financial performance but also by the value they add to the economy, environment and society in which they operate.¹²

The Brundtland Commission gave a broad definition of sustainable development such that none of its components prevails over the others. Accordingly, each of the components, though independently important in the short run, must be considered simultaneously in order to achieve sustainability in the long run.¹³ Moreover, these components are inter-

⁸ (1992) UNCED held at Rio de Janeiro.

⁹ The phrase is generally believed to have been coined by John Elkington in his book "Cannibals With Forks: The Triple Bottom Line of 21st Century Business".

¹⁰ (2003) Stefan Schaltegger et al: "An Introduction to Corporate Environmental Management: Striving for Sustainability" p 21.

¹¹ Dyllick and Hockerts, supra, at note 4, p 131.

¹² (2006) Andrew Savitz and Karl Weber: "The Triple Bottom Line: How Today's Best-Run Companies Are Achieving Economic, Social and Environmental Success- And How You Can Too" p xii.

¹³ (2007) Stefano Pogutz: "Sustainable Development, Corporate Sustainability and Corporate Social Responsibility: The Need for an Integrative Framework" Sustainable Social and Ecosystem Stewardship International Conference of the Greening of Industry Network, Wilfrid Laurier University, Waterloo, Canada. pp 7-8; <https://qin.confex.com/qin/viewHandout.cgi?uploadid=151> [accessed July 30, 2013].

related and may influence and support each other in the process towards sustainability.¹⁴

The concepts of sustainable development and the triple bottom line have extended corporate responsibility to include the management by companies of the impacts of their activities on nature and the society as well as the economy in which they operate.¹⁵ This extension in corporate responsibility and management has been termed 'corporate sustainability'.¹⁶ Corporate sustainability has been defined as meeting the needs of companies' direct and indirect stakeholders¹⁷ without compromising companies' ability to meet the needs of future stakeholders.¹⁸ Corporate sustainability was also defined as 'the capacity of a firm to create value through the products and services it produces and to continue operating over the years'.¹⁹ After the United Nations Conference on Environment and Development in 1992, the debate occurred over how companies should contribute to the objective of sustainable development, resulting in a different view of corporate sustainability.²⁰ The new view considers corporate sustainability as an attempt to adapt the principles of sustainable development to companies,

¹⁴ Ibid, p 8.

¹⁵ (2006) William Young and Fiona Tilley: "Can Business Move Beyond Efficiency? The Shift Toward Effectiveness and Equity in the Corporate Sustainability Debate" *Journal of Business Strategy and the Environment*, Vol. 15, issue 6, p 403; www.onlinelibrary.wiley.com/doi/10.1002/bse.510/pdf [accessed July 30, 2013].

¹⁶ Ibid.

¹⁷ Such as shareholders, employees, clients, pressure groups, communities etc.

¹⁸ Dyllick and Hockerts, *supra* at note 4.

¹⁹ Stefano Pogutz, *supra* at note 13, p 11.

²⁰ Ibid.

placing the corporate goal of making profit with environmental and social considerations.²¹

Consequently, many other definitions of corporate sustainability have been formulated. Corporate sustainability has been defined as a corporate management approach which embraces long-term shareholder value by taking up opportunities and managing risks that derives from economic, environmental and social developments.²² It has also been argued that a sustainable company is one that maximizes shareholders' value while protecting its business environment and impacting positively the lives of its stakeholders; it operates so that its business interests are not detrimental to the interests of the environment and society.²³ Companies in a bid to operate in a sustainable manner therefore must address environmental, social and economic issues in order to ensure balanced progress that benefits people at all levels of society. Companies can achieve this by adopting policies, programs, strategies and related instruments that aims at the goal of sustainable development.²⁴

The concept of sustainable development is significant to the discussion on corporate sustainability because it articulates the areas that companies need to focus on in order to be sustainable, which include corporate environmental, social, and economic performance.²⁵

²¹ Ibid.

²² The Dow Jones Sustainability Indices; www.sustainability-indices.com/sustainability-assessment/corporate-sustainability.jsp [accessed July 10, 2013].

²³ Stefano Pogutz, *supra* at note 13, p 12.

²⁴ Dyllick and Hockerts, *supra* at note 4.

²⁵ Mel Wilson, *supra* at note 3.

1.2.2 CORPORATE SOCIAL RESPONSIBILITY (CSR) AND CORPORATE SUSTAINABILITY (CS)

CSR deals with the responsibility of companies towards the society in which they operate. The main premise on which it is based is that corporate managers are obliged by ethics to take into account during decision-making the needs of the society in which they operate, and not just the interests of the company's shareholders or their own self-interest.²⁶ CSR and CS have been referred to as two notions which showed separate paths but have recently converged.²⁷ The Erasmus University's Business Society Management has also referred to corporate sustainability as an ultimate goal with corporate social responsibility as an intermediate stage where companies try to balance the triple bottom line in order to reach that goal.²⁸ The European Commission defines CSR as the responsibility of companies for the impact of their activities on the society.²⁹ In order to be fully responsible, companies should have management systems that integrate social, environmental, and ethical concerns, and develop core strategies in close collaboration with their stakeholders.³⁰

The concepts of CS and CSR influence corporate developments in different ways. CS aims at the management of corporate environmental, economic and social effects to achieve sustainable development of the company and its

²⁶ Ibid.

²⁷ (2003) Marcel Van Marrewijk: "Concepts and Definitions of of Corporate Social Responsibility and Corporate Sustainability: Between Agency and Communion" Journal of Business Ethics, Vol. 44, p 101; www.teaching.fec.anu.edu.au/busn2007/Marrewijk_2003.pdf [accessed July 11, 2013].

²⁸ Ibid.

²⁹ (2011) European Commission; www.ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm [accessed July 11, 2013].

³⁰ Ibid.

business as well as contributing positively to the sustainable development of the economy and society in which it operates; CS thus strives for the management and coordination of all corporate activities, and the integration of social and environmental management into corporate management.³¹ CSR on the other hand places a responsibility on companies to deal with societal issues on a voluntary basis in collaboration with their stakeholders.³² Thus, CS and CSR both deal with the activities of companies in response to the need for sustainable development. CS and CSR emphasize the inclusion of social and environmental considerations in companies' operations and in interactions between companies and their stakeholders.³³

Although CS and CSR evolved separately, they are pushing toward a common goal; they share the same vision which is that of balancing economic responsibilities with social and environmental responsibilities.³⁴ Both show that companies must balance the three elements of the triple bottom line to achieve long-term sustainability and social responsibility.³⁵ While CSR emphasizes the benefits to a company's external stakeholders, CS emphasizes the benefits to the company's stakeholders and to the company itself.³⁶

³¹ (2009) Stefan Schaltegger: "From Corporate Social Responsibility to Corporate Sustainability" Forum CSR International; <http://www.forum-csr.net> [accessed July 11, 2013].

³² Ibid.

³³ Marcel Van Marrewijk, *supra* at note 27, p 102.

³⁴ (2008) Ivan Montiel: "Corporate Social Responsibility and Corporate Sustainability: Separate Pasts, Common Futures" *Journal of Organization and Environment*, Vol. 21, No. 3, p 246; www.oae.sagepub.com/content/21/3/245.full.pdf+html [accessed July 11, 2013].

³⁵ Ibid, p 260.

³⁶ Savitz and Weber, *supra* at note 12, p xii.

CSR is significant to CS because it provides the ethical arguments in support of companies working towards sustainable development. Companies have an ethical obligation to help move the society towards sustainable development.³⁷

1.2.3 STAKEHOLDER THEORY AND CORPORATE SUSTAINABILITY

A company can be sustainable if it establishes and maintains sustainable and durable relationships with its stakeholders.³⁸ A stakeholder in a company is one who has an interest in the company.³⁹ Stakeholders therefore can expect the company to act in a particular way, with regard to the stakeholders' interests.⁴⁰ The stakeholder theory is premised on the argument that the stronger the relationship between a company and its external stakeholders, the easier for the company to meet its business objectives part of which is the continued operation over a long term.⁴¹ The goal of the theory is to strengthen corporate relationships with the external stakeholders so as to develop a competitive advantage. In order to achieve this goal, companies must identify their stakeholders and develop strategies for dealing with the identified stakeholders.⁴²

Although, various stakeholder groups have diverse goals, priorities, and demands, there is a general consensus that the goals of economic stability,

³⁷ Mel Wilson, *supra* at note 3.

³⁸ (2006) Francesco Perrini and Antonio Tencati: "Sustainability and Stakeholder Management: The Need for New Corporate Performance Evaluation and Reporting Systems" *Journal of Business Strategy and the Environment*, Vol. 15, p 298; http://www.environmentalmanager.org/wp-content/uploads/2009/03/fulltext_id112770531placeboie.pdf [accessed September 12, 2013].

³⁹ Chartered Secretaries Southern Africa, *supra* at note 1, p 12.

⁴⁰ *Ibid.*

⁴¹ Mel Wilson, *supra* at note 3.

⁴² *Ibid.*

environmental protection, and social justice are shared by many stakeholder groups. Stakeholder theory is thus significant to corporate sustainability because it provides additional business arguments in support of companies working toward sustainable development.⁴³

1.2.4 CORPORATE ACCOUNTABILITY AND CORPORATE SUSTAINABILITY.

The concept of corporate accountability refers to the legal obligation of a company to behave in a right way.⁴⁴ It aims to ensure that corporate operations are not harmful, but in the interests of the society.⁴⁵ Pursuant to the social contract theory of CSR, companies are believed to be given a 'license to operate' by the society in which they operate in expectation of good corporate behavior. Companies should therefore be accountable to the society in which they operate for their behavioral performance.⁴⁶ Corporate accountability theory is significant to corporate sustainability because it defines the relationship between companies and the society in which they operate, and provides the argument in support of companies evaluating and reporting on their environmental, social, and economic performance.⁴⁷

In conclusion, corporate sustainability although acknowledges the importance of corporate growth and profitability, places greater emphasis on corporate economic, environmental, and social performance and the

⁴³ Ibid.

⁴⁴ "Minding Our Business: The Role of Corporate Accountability in Sustainable Development", an NGO report to the UN Commission on Sustainable Development (1997); <http://isforum.org/tobi/accountability/mindbusiness97.aspx> [accessed September 12, 2013].

⁴⁵ Ibid.

⁴⁶ Mel Wilson, *supra* at note 3.

⁴⁷ Ibid.

evaluating and reporting on this performance.⁴⁸ Furthermore, companies are required to be aware of the need to maintain a culture of corporate ethics, which provides a code of conduct and sets values for companies.⁴⁹ Moreover, the perception of ethical issues by external stakeholders may affect the sustainability of a company. An activist stakeholder may regard itself as having an interest in the activities and operations of a company especially with regard to environmental issues.⁵⁰

1.3 WHY SUSTAINABILITY

Companies can be more successful in their businesses while at the same time contributing to the quality of life of their employees, community and sustaining the natural environment in which they operate.⁵¹ It is in the economic interest of a company to work towards sustainability of its business as this will strengthen its relationship with its stakeholders and this in turn will enable the company to meet its business objectives.⁵² It is noteworthy that the business objectives of every company include inter alia; continued operation over a long term; management guarantee to shareholders of maximum and long term value for shareholders' investment.

Another business reason why corporations should operate in a sustainable manner is the risk of litigation and consumer activism resulting from perceived bad corporate practice is reduced. Furthermore, when a company adapts to changing community expectations for better practice with respect

⁴⁸ Ibid.

⁴⁹ Chartered Secretaries Southern Africa, supra at note 1, p 20.

⁵⁰ Ibid.

⁵¹ Dexter Dunphy et al., supra at note 5, p 7.

⁵² Mel Wilson, supra at note 3.

to sustainability, consumer loyalty is enhanced and it profits the business of the company.⁵³ Thus, sustainability presents an opportunity for business and risk to companies. According to the king report, sustainability practices increase the trust and confidence of a company's stakeholders in the company as well as the legitimacy of the company's operations.⁵⁴

1.4 THE BUSINESS ENVIRONMENT

In this research, the phrase 'business environment' is used to refer to a company's natural capital. Natural capital refers to 'the land, air, water, living organisms and all formations of the earth's biosphere that provide ecosystem goods and services imperative for survival and well-being'.⁵⁵ The Nigerian 'Environmental Impact Assessment Act' defines environment as 'the components of the earth including land, water, air, all layers of the atmosphere, all organic and inorganic matter, living organisms; the interacting natural systems that include all of these components'.⁵⁶

1.5 PROBLEM STATEMENT

Sustainability issues have recently attracted great importance internationally.⁵⁷ Sustainability is one of the most important sources of business opportunities and risks. Thus, company managers during decision-making should understand the interconnection between nature,

⁵³ Dexter Dunphy et al., *supra* at note 5, p 27.

⁵⁴ King Report, *supra* at note 2.

⁵⁵ International Institute for Sustainable Development; www.iisd.org/natres/agriculture/capital.asp [accessed July 11, 2013].

⁵⁶ Section 63(1) Environmental Impact Assessment Act; www.nigeria-law.org/Environmental%20Impact%20Assessment%20Decree%20No.%2086%201992.htm [accessed July 15, 2013].

⁵⁷ King Committee on Governance: "Draft Code of Governance Principles for South Africa" (2009), p 14; <http://www.ru.ac.za/media/rhodesuniversity/content/erm/documents/xx.,King,3,-,King,Report.pdf> [accessed September 12, 2013].

society and business. Company managers should understand that companies do not use only financial resources in their business operations but also environmental and social resources.⁵⁸ In the same vein, development can only be meaningful and sustainable if policies not only take into account economic concerns but social and environmental concerns as well.⁵⁹

It is noteworthy that in relation to the oil industry, the concept of corporate sustainability is predominantly premised upon corporate environmental responsibility. The oil companies operating in Nigeria could not be said to be taking responsibility for their business environment. Even though these companies are making huge profits and are economically buoyant, the same cannot be said of the environment in which they operate. Anyone would expect that the Niger Delta Region (NDR) of Nigeria being the largest reservoir of crude in the country would be in the highest state of sustainable development possible, since most of the oil companies in Nigeria carry out their exploration activities in this region. This is however not the case.

Since the discovery and drilling of oil in Nigeria, it is estimated that over ten million barrels have been spilled.⁶⁰ As a result of increase in the rate of oil production in the Niger Delta region, the occurrence of oil spills has greatly increased and with very little of the spilled oil recovered, most of the spilled

⁵⁸ Ibid, p 12.

⁵⁹ Thomas Dyllick and Kai Hockerts, *supra* at note 4.

⁶⁰ (2012) Anyanwu Chukwudi: "The Oil Industry and the Nigerian Environment" paper delivered at the 32nd Annual Meeting of the International Association for Impact Assessment, Centro de Congresso da Alfandega, Porto-Portugal, p 1; www.iaia.org/conferences/iaia12/Final_Paper_Review.aspx [accessed July 30, 2013].

oil is lost to the environment.⁶¹ Thus, there has been gradual environmental degradation of the region with pollution of waters, destruction of aquaculture, vegetation and agricultural land with no concerted and effective effort by the oil companies to control these problems associated with their activities.⁶² The Niger Delta community shorelines have been eroded consequent upon the high volume of exploration and exploitation activities taking place there. A lot of land degradation has been caused by oil-induced fire and pollution from the activities of oil companies.⁶³ Vast stretches of the Niger-Delta land have poor water quality; there is pollution, disruption and degradation of farmlands and fishing ports; destruction of wild life and biodiversity; and loss of fertile soil.⁶⁴ Thus, the Niger Delta Region despite establishing Nigeria as a major oil producer encounters on a large scale the negative effects of the exploration activities of the multinational corporations that operate in the region.⁶⁵

Companies' activities impact on their business environment through their land use, manufacturing processes, management systems, community activities, work practices etc. and so affect the sustainability of the environment.⁶⁶ The oil companies operating in Nigeria are not exempt as shown above. Partly due to this environmental situation in the Niger Delta,

⁶¹ (2006) UNDP Nigeria: "Niger Delta Human Development Report", p 181; www.bebor.org/wp-content/uploads/2012/09/UNDP-Niger-Delta-Human-Development-Report.pdf [accessed September 12, 2013].

⁶² Anyanwu Chukwudi, *supra* at note 60.

⁶³ (2009) Eregba P. B. and Irughe I. R. "Oil Induced Environmental Degradation in the Nigeria's Niger-Delta: The Multiplier Effects" *Journal of Sustainable Development in Africa*, Vol. 11, No. 4, pp. 163-165; www.jsd-africa.com/Jsda/V12NO2_Winter2009_B/Pdf/OilInducedEnvironmentalDegradationintheNigerDelta.pdf [accessed September 12, 2013].

⁶⁴ (2012) Olubayo Oluduro: "Oil Exploitation and Human Rights Violations in Nigeria's oil Producing Communities" *Afrika Focus*, Vol. 25, No. 2, p 160; <http://www.afrikafocus.eu/file/19> [accessed July 15, 2013].

⁶⁵ *Ibid.*

⁶⁶ Dexter Dunphy et al., *supra* at note 5, p 25.

the people of this region have resorted to militancy, kidnapping oil workers, destroying oil installations and sabotaging oil pipelines. This instability has often led oil companies to abandon their facilities and renounce some of their oil leases.⁶⁷ This suggests that if the situation is not remedied early enough, a time may come when the oil companies might be forced to cease operations completely in the region and this would be a great loss to the country in terms of economic value and job creation. Thus, it is expedient that avenues be sought for oil companies to be responsible for the impact their activities make on the environment.

1.6 RESEARCH QUESTIONS

The principle of corporate sustainability demands that the oil industry in Nigeria be environmentally responsible and remain sustainable. The key issues to be investigated therefore are as follows:

- i. What are the legal and regulatory frameworks in place to ensure environmental responsibility by oil companies and sustainability of the oil industry in Nigeria?
- ii. Are these frameworks sufficient and effective?
- iii. If yes, why is there still so much environmental degradation and pollution in the Niger Delta Region?
- iv. If not, what can be done to enhance the quality and effectiveness of the frameworks?

⁶⁷ (2009) Amnesty International Publications: "Nigeria: Petroleum Pollution and Poverty in the Niger Delta." p 13;
www.es.amnesty.org/uploads/media/Vertidos_de_petroleo_de_la_empresa_Shell_en_el_Delta_del_Niger.pdf
 [accessed July 15, 2013].

- v. What international best standards and practices are available for corporate environmental management and responsibility?
- vi. To what extent are these standards reflected in the legal and regulatory frameworks for environmental responsibility and sustainability in Nigeria?
- vii. What is the way toward corporate environmental responsibility in and corporate sustainability of the Nigerian oil industry?

1.7 OBJECTIVE AND SIGNIFICANCE OF STUDY

Corporations are major drivers of any economy as they contribute immensely to the economy of every nation and the economy of the world at large. The Nigerian oil industry is not an exception. The strategic importance of oil in the economies of several nations, among them Nigeria, cannot be over-emphasized. The oil industry is the backbone of the Nigerian economy as it accounts for over ninety percent of the total foreign exchange revenue of the country.⁶⁸ Together, oil and natural gas extraction comprises ninety-seven per cent of Nigeria's foreign exchange revenues.⁶⁹ According to the 'Organization of Petroleum Exporting Countries' (OPEC) ⁷⁰, crude oil contributed about 235,695 billion dollars to Nigeria's GDP in 2011. In the

⁶⁸ Chapter One, The Niger Delta Regional Development Master Plan, p 72; <http://www.nddc.gov.ng/NDRMP> [accessed July 15, 2013].

⁶⁹ Amnesty International Publications, *supra* at note 67, p 10.

⁷⁰ (2012) OPEC Annual Statistical Bulletin; www.opec.org/opec_web/static_files_project/media/downloads/publications/ASB2012.pdf [accessed July 11, 2013].

first quarter of 2013, the oil sector contributed about 14.75 percent to the real gross domestic product of Nigeria.⁷¹

It is clear that Nigeria cannot afford to lose such a buoyant industry as it remains essential to the economy of the country. However, where the land is being damaged, the environment continuously degraded and the communities restive, what is the guarantee that oil companies will continue to operate over the long term?

Hence, to ensure the sustainability of the industry, one of the measures that must be taken is to preserve the environment in which companies in the industry operate. Therefore, oil companies must carry out their exploration activities mindful of the environment in which they are operating; causing very minimal damage and degradation to the environment so that they can continue to operate over a long period of time. Most of the oil produced in Nigeria is produced in the Niger Delta Region being the largest wetland in the country and host to most of the multinational oil companies operating in the country. It follows that such a region should be kept in the highest possible state of sustainability to ensure that oil companies can continue to have access to crude oil and operate in a habitable environment over a long period of time. This will also ensure that job opportunities subsist, that there is continuous wealth creation for the country and that the economy remains viable. It is noteworthy also that the economy and society depend ultimately on the

⁷¹ Gross Domestic Product for Nigeria: 2012 and Estimate for Quarter One, 2013; www.nigerianstat.gov.ng [accessed July 15, 2013].

integrity of the biosphere and the environmental processes occurring within it,⁷² hence, all measures must be taken to advance its sustainability.

In the circumstances described above, academic research on the legal frameworks on sustainability is imperative. Thus, the objective of this study is to examine the legal and regulatory frameworks for corporate environmental sustainability in Nigeria especially in relation to the operations and activities of operators in the Nigerian oil industry. The study further explores how multinational oil corporations operating in the country can discharge their responsibilities in terms of international standards and principles on corporate environmental management. Clearly, the sustainability of the business environment of the oil companies is essential to the sustainability of the industry.

1.8 METHODOLOGY

The study is conducted using doctrinal research. Literature review and examination of relevant statutes constitute the core of the research. Where reference to data is relevant, reference is made to secondary source of data information.

1.9 CHAPTER BREAKDOWN

Chapter one introduces the concept of corporate sustainability. In chapter two, the legal and regulatory framework for corporate environmental responsibility in the Nigerian oil industry is discussed. This is followed by a discussion of the international legal framework for corporate environmental

⁷² Dexter Dunphy, *supra* at note 5, p 23.

responsibility in chapter three. Chapter four discusses how oil companies in Nigeria can be more environmentally responsible in the light of international standards. In chapter five, some recommendations were given towards corporate environmental responsibility in the Nigerian oil industry.

CHAPTER TWO: LEGAL AND REGULATORY FRAMEWORK FOR CORPORATE ENVIRONMENTAL RESPONSIBILITY IN THE NIGERIAN OIL INDUSTRY.

2.1 INTRODUCTION

This chapter considers the framework in place in Nigeria for the control and regulation of the activities of oil companies and the impacts of such activities on the environment wherein the companies operate. Although there is no specific framework targeted at corporate environmental responsibility in Nigeria, there are provisions in environmental statutes which are aimed at regulating the manner in which corporations carry out their activities in relation to the environment where such activities are carried out. The provisions of the various environmental statutes regulate diverse aspects of the activities in the oil industry.

There are also various regulatory agencies charged with the control and administration of the activities of companies in relation to their operating environment. Though the Department of Petroleum Resources is the major agency responsible for controlling and regulating activities in the oil industry, it does not oust the authority of the Federal Ministry of Environment which is obliged with the protection of the overall Nigerian environment.

The basis for environmental protection in Nigeria is contained in the federal constitution being the supreme law of the country and all other laws

deriving their validity and legitimacy from it.⁷³ The constitution vests on the government of Nigeria the power to protect and improve the environment and safeguard the water, air, land, forest and wildlife of Nigeria.⁷⁴

The discovery of toxic waste dumped in Koko in southern Nigeria in 1988 prompted the Nigerian government in collaboration with the United Nations Environmental Program (UNEP) to organize an international workshop on the environment. This led to the publication of the 'National Policy on the Environment' (NPE) in 1989.⁷⁵ The NPE emphasizes Nigeria's commitment to a national environmental policy that will ensure sustainable development based on proper management of the environment by ensuring that: 'environmental concerns are integrated into major economic decision-making processes; environmental remediation costs are built into major development projects; environmental friendly technologies are applied in the management of natural resources; and environmental impact assessment is mandatorily carried out before any major development project is embarked on'.⁷⁶ The NPE further provides that the policy's success would be built on sustainable development principles which include:

- i. The precautionary principle that where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be

⁷³ Section 1, 1999 Constitution of the Federal Republic of Nigeria; www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm [accessed July 18, 2013].

⁷⁴ Section 20, Ibid.

⁷⁵ (2009) Ogbodo S. Gozie: "Environmental Protection in Nigeria: Two Decades after the Koko Incident" Annual Survey of International and Comparative Law, vol. 15, issue 1, article 2, p 2; <http://digitalcommons.law.ggu.edu/annlsurvey/vol15/iss1/2> [accessed July 18, 2013].

⁷⁶ The Draft Revised National Policy on the Environment, 1998; www.nesrea.org/images/National%20Policy%20on%20Environment.pdf [accessed July 18, 2013].

used as a reason for postponing cost-effective means to prevent environmental degradation;

- ii. The pollution-prevention-pays principle which encourages industry to invest positively to prevent pollution;
- iii. The polluter-pays principle which suggests that the polluter should bear the cost of preventing and controlling pollution;
- iv. The user-pays principle by which the cost of a resource to a user must include all the environmental costs associated with its extraction, transformation and use;
- v. The principle of intergenerational equity which requires that the needs of the present generation are met without compromising the ability of future generations to meet their own needs;
- vi. The principle of intra-generational equity which requires that different groups of people within the country have equal right to a clean and healthy environment; and the
- vii. Subsidiary principle which requires that decisions should as much be made by communities affected or on their behalf by the authorities closest to them.⁷⁷

Pursuant to the responsibility of protecting the Nigerian environment as provided by the constitution and in alignment with the NPE, the federal government of Nigeria has enacted various laws and established various regulatory agencies for the protection of the Nigerian environment. There is no clear case law to establish how these laws monitor corporate environmental responsibility in the Nigerian oil industry. However, some of

⁷⁷ Ibid.

these laws and regulatory agencies that are empowered to exercise jurisdiction within the Nigerian oil industry are discussed below.

2.2 REGULATORY FRAMEWORK

2.2.1 FEDERAL ENVIRONMENTAL PROTECTION AGENCY ACT

Nigeria established the Federal Environmental Protection Agency in 1988 under the Federal Environmental Protection Agency Decree of 1988.⁷⁸ The agency was charged with responsibility for ‘the protection and development of the environment, biodiversity conservation, sustainable development of Nigeria's natural resources in general and the management of environmental technology including initiation of policy in relation to environmental research and technology’.⁷⁹ Specific functions of the agency include:

- i. Preparation of a comprehensive national policy for the protection of the environment, conservation of natural resources including procedure for environmental impact assessment for all development projects;
- ii. Preparation in accordance with the National Policy on the Environment periodic master plans for the development of environmental science and technology and advise the Federal Government on the financial requirements for the implementation of such plans;

⁷⁸ Redesignated Federal Environmental Protection Agency Act, 1988 and amended by Decree No. 59 of 1992.

⁷⁹ Section 5, Federal Environmental Protection Agency Act;
www.vertic.org/media/NationalLegislation/Nigeria/NG_Environmental_Agency_Act.pdf [accessed July 18, 2013].

- iii. Advise the Federal Government on national environmental policies and priorities, the conservation of natural resources and sustainable development, scientific and technological activities affecting the environment and natural resources;
- iv. Advise the President on the utilization of the one per cent Ecological Fund for the protection of the environment;
- v. Promote co-operation in environmental science and conservation technology with similar bodies in other countries and with international bodies connected with the protection of the environment and the conservation of natural resources;
- vi. Co-operate with Federal and State Ministries, local governments, statutory bodies and research agencies on matters and facilities relating to the protection of the environment and the conservation of natural resources;
- vii. And carry out such other activities as are necessary or expedient for the full discharge of the functions of the Agency.⁸⁰

The Agency is specifically obliged to co-operate with the Department of Petroleum Resources of the Nigerian Federal Ministry of Petroleum Resources for the removal of oil pollutants discharged into the Nigerian environment and give such support as the department may occasionally request from the agency.⁸¹

2.2.2 THE PETROLEUM ACT

⁸⁰ Ibid.

⁸¹ Section 24, Federal Environmental Protection Agency Act, *supra* at note 79.

The Petroleum Act though not strictly an environmental statute made some regulations for the general operations of the oil and gas industry in Nigeria.⁸² The Act grants the minister of petroleum resources the power ‘to make regulations providing generally for matters relating to licenses and leases granted under the Act and operations carried on under the Act including inter alia the prevention of pollution of water courses and the atmosphere’.⁸³ This led to the enactment of the Petroleum (Drilling and Production) Regulations in 1969. The regulation was enacted to regulate and monitor the activities of the oil and gas industry in Nigeria. The regulation provides that ‘a licensee or lessee shall adopt all practicable precautions to prevent the pollution of inland waters, rivers, watercourses, the territorial waters of Nigeria or the high seas by oil, mud or other fluids or substances which might contaminate the water, banks or shoreline or which might cause harm or destruction to fresh water or marine life, and where any such pollution occurs or has occurred, shall take prompt steps to control and if possible, end it’.⁸⁴

The Department of Petroleum Resources is the regulatory agency for the enforcement of the petroleum regulations. The department supervises and monitors the compliance of license holders with the provisions of the regulations, and the minister for petroleum resources is empowered to

⁸² (2003) Kent Nnadozie: “Environmental Regulation of the Oil and Gas Industry in Nigeria” International Environmental Law and Policy in Africa (Beatrice Chaytor and Kevin Gray eds.) p 111.

⁸³ Section 9(1)(b)(iii) Petroleum Act, 1969; www.faolex.fao.org/docs/pdf/nig92407.pdf [accessed July 20, 2013]

⁸⁴ Section 25, Petroleum (Drilling and Production) Regulations, 1969; www.faolex.fao.org/docs/pdf/nig120683.pdf [accessed July 20, 2013].

revoke any oil prospecting and drilling license if the holder of such a license fails to comply with the procedures and provisions of the regulations.⁸⁵

2.2.3 THE OIL PIPELINES ACT

The Oil Pipelines Act which was enacted in 1956 also made some provisions on the protection of the Nigerian environment. The Act provides that ‘the holder of a permit for the construction of an oil pipeline shall take all reasonable steps to avoid unnecessary damage to any land entered upon and to any building, crops or profitable trees on such land’.⁸⁶ The Act also prohibits the holder of a license for the construction of an oil pipeline from ‘making such alteration in the flow of water in any navigable waterway, or construct such works in, under or over any navigable waterway as might obstruct or interfere with the free and safe passage of vessels, canoes or other craft except otherwise permitted under the terms of the license’.⁸⁷ Thirdly, the Act provides that ‘every license shall be subject to the provisions of the Act as in force at the date of its grant and to such regulations concerning public safety, the avoidance of interference with works of public utility in, over and under the land included in the license and the prevention of pollution of such land or any waters as may from time to time be in force’.⁸⁸ Section 33 of the Act empowers the minister of petroleum resources to make regulations prescribing inter alia, measures in respect of public

⁸⁵ See generally the provisions of the Petroleum (Drilling and Production) Regulations, *ibid*.

⁸⁶ Section 6(3), Oil Pipelines Act, 1956; www.placng.org/laws/nigeria/node/479 [accessed July 20, 2013].

⁸⁷ Section 14(b) *ibid*.

⁸⁸ Section 17(4) *ibid*

safety, the avoidance of interference with works of public utility in, over and under any land and the prevention of pollution of any land or water.⁸⁹

Pursuant to this, the Department of Petroleum Resources of the Ministry of Petroleum Resources publishes the 'Guidelines and Procedures for the Design, Construction, Operation and Maintenance of Oil and Gas Pipeline Systems in Nigeria.' The guidelines require that before an approval is granted for the development of an oil pipeline, the applicant must submit to the department of petroleum resources a copy of the preliminary environmental impact assessment and a basic concept of leak detection and general pipeline integrity monitoring system.⁹⁰ It also provides that the operator of an oil pipeline shall establish a written emergency plan for implementation in the event of systems failures, accidents and other emergencies, which shall include procedures for prompt and expedient remedial action for the protection of property and the environment and control of accidental discharge from the pipeline; and adequate personnel training for handling such emergencies.⁹¹

2.2.4 ENVIRONMENTAL IMPACT ASSESSMENT ACT

Environmental Impact Assessment (EIA) Decree 86 of 1992⁹² was promoted by the Federal Environmental Protection Agency (FEPA), now Federal Ministry of Environment. FEPA made it mandatory for both public and

⁸⁹ Sections 33 and 34, *ibid*

⁹⁰ Provisions 1.2.3.7 and 1.2.3.8, Guidelines and Procedures for the Design, Construction, Operation and Maintenance of Oil and Gas Pipeline Systems in Nigeria, 2007; http://www.dprnigeria.com/forms_procedures/guidelines_n_procedures_for_the_design_construction_operation_maintenance_of_oil_n_gas_pipeline_sys.pdf [accessed July 20, 2013].

⁹¹ Provision 2.4.1, Guidelines and Procedures for the Design, Construction, Operation and Maintenance of Oil and Gas Pipeline Systems in Nigeria, *ibid*.

⁹² Now Environmental Impact Assessment Act, 1992.

private sectors' development projects to be preceded by an environmental impact assessment (EIA).⁹³ According to the Act, the objective of any EIA shall be 'to establish whether a proposed activity may likely, or to a significant extent affect the environment or have environmental effects'.⁹⁴ Such possible environmental effects must first be taken into account before a decision is taken by any person, authority, corporate body or unincorporated body including the government of the federation, state or local government intending to undertake or authorize the undertaking of any such activity.⁹⁵ The Act established a mandatory study list⁹⁶ which delineates the types of projects for which an EIA is mandatory. Petroleum projects are included in this list,⁹⁷ thus the vast majority of oil development activities in the Niger Delta and any other part of the country require an EIA. The Act provides that when a project is described on the mandatory study list, no federal, state or local government authority or agency shall grant an authorization permitting such project to be carried out in whole or in part until the agency has received and considered an EIA report of the project and has taken a decision or issued an order that the project could be carried out with or without conditions.⁹⁸

⁹³ (2011) Obinna Okafor: "The State of Environmental Monitoring in Nigeria and Ways to Improve it: Case Study of Niger Delta", p 24; www.academia.edu/909562/The_State_of_Environmental_Monitoring_in_Nigeria_and_Ways_to_Improve_It_Case_Study_of_Niger_Delta [accessed on July 20, 2013].

⁹⁴ Section 1(a), Environmental Impact Assessment Act 1992; www.nigeria-law.org/Environmental%20Impact%20Assessmen%20Decree%20No.%2086%201992.htm [accessed July 26, 2013].

⁹⁵ Ibid.

⁹⁶ The mandatory study list is provided for in the schedule to the EIA Act, Ibid. The mandatory study list contains the list of development projects that must be preceded by an EIA.

⁹⁷ Section 12, Schedule to the EIA Act, ibid.

⁹⁸ Section 13, EIA Act, ibid.

Where a project or activity may significantly impact the environment, even where such activity is not listed on the mandatory study list, the Act mandates that relevant environmental issues should be identified and studied before the commencement of such a project or activity.⁹⁹ The Act also specifies that an EIA must assess how the proposed project may affect the environment; consider alternative means of carrying out the project and identify ways to mitigate adverse environmental impacts of the project.¹⁰⁰ The Department of Petroleum Resources is required to impartially review the EIA before allowing a proposed project.¹⁰¹

The next section discusses the institutions that oversee the implementation of environmental law and policy in relation to the Nigerian oil industry.

2.3 INSTITUTIONAL FRAMEWORK

2.3.1 THE FEDERAL MINISTRY OF ENVIRONMENT

The Federal Ministry of Environment (FME) was established by the Nigerian government as a successor to the Federal Environmental Protection Agency, to ensure effective coordination of all environmental matters which were fragmented and dispersed between different ministries. The intention was to ensure that environmental matters are adequately mainstreamed into all developmental activities.¹⁰² The FME was established as the supreme authority over environmental affairs in the country and charged with the responsibility of ensuring a clean and healthy environment throughout the

⁹⁹ Section 3(1), EIA Act, *ibid.*

¹⁰⁰ Section 4; 17(1) and (2), EIA Act, *ibid.*

¹⁰¹ Section 6, EIA Act, *ibid.*

¹⁰² Nigeria: Federal Ministry of Environment; www.environment.gov.ng/about-moe/profile [accessed July 21, 2013].

country.¹⁰³ The ministry is legally vested with the responsibility of protecting and sustaining the Nigerian environment through the formulation and implementation of regulatory frameworks. The national policy on the environment is one of such frameworks through which the ministry fulfills its obligations.¹⁰⁴ The ministry is mandated to protect the environment against pollution and degradation by monitoring and enforcing environmental standards on the activities of industries operating in Nigeria.¹⁰⁵ Thus, the ministry has as one of its departments ‘the department of environmental assessment’. The department has the mandate, inter alia, to provide management and development of ecotoxicology; to conduct environmental studies and audit; to enforce environmental quality standards and ensure that oil and gas industry operators adopt good field practices and standards including spill clean-up, site remediation and rehabilitation activities. The ministry is also responsible for developing procedures and guidelines for environmental impact assessment in different industrial sectors, reviewing environmental impact assessment reports and preparing environmental impact statements. Finally, the ministry maintains an environmental impact assessment register and carries out environmental impact assessment compliance monitoring.¹⁰⁶

2.3.2 THE NATIONAL OIL SPILL DETECTION AND RESPONSE AGENCY

¹⁰³ Obinna Okafor, supra at note 93, p 22.

¹⁰⁴ (2005) P.C. Nwilo and O.T. Badejo: “Oil Spill Problems and Management in the Niger Delta” International Oil Spill Conference Proceedings, vol. 2005, no. 1, p 569; www.ioscproceedings.org/doi/pdf/10.7901/2169-3358-2005-1-567 [accessed on July 21, 2013].

¹⁰⁵ Nigeria: Federal Ministry of Environment, supra at note 102.

¹⁰⁶ Servicom Charter for the Federal Ministry of Environment, 2005; www.servicenigeria.com/charters/environment-eapc.doc [accessed July 21, 2013].

The National Oil Spill Detection and Response Agency is an agency of the Federal Ministry of Environment. It was established in 2006 by the federal government of Nigeria as a result of the persistent environmental degradation and devastation of the ecosystem particularly the oil producing areas of the Niger Delta region.¹⁰⁷ The agency is empowered to ‘coordinate oil spill management and ensure the implementation of the National Oil Spill Contingency Plan for Nigeria in accordance with the International Convention on Oil Pollution Preparedness, Response and Cooperation which Nigeria had ratified’.¹⁰⁸ The objectives of the agency include:

- i. the coordination and implementation of the National Oil Spill Contingency Plan for safe, timely, effective and appropriate response to major or disastrous oil pollution;
- ii. identification of high-risk areas as well as priority areas for protection and clean-up;
- iii. establishment of the mechanism to monitor and assist or where expedient, direct the response, including the capability to mobilize the necessary resources to save lives, protect threatened environment and clean up to the best practical extent of the impacted site.¹⁰⁹

2.3.3 DEPARTMENT OF PETROLEUM RESOURCES

The department is a department in the Federal Ministry of Petroleum Resources, Power and Mines which is responsible for overseeing the

¹⁰⁷ Nigeria: Federal Ministry of Environment; www.environment.gov.ng/about-moe/departments-agencies/agencies-parastatals/national-oil-spill-detection-and-response-agency-nosdra [accessed July 21, 2013].

¹⁰⁸ Ibid.

¹⁰⁹ Section 5, National Oil Spill Detection Response Agency Act; www.placng.org/lawsofnigeria/node/343 [accessed July 21, 2013].

activities of companies licensed to engage in any petroleum activity in the country, with the objective of ensuring that national goals and aspirations are not thwarted and that oil companies carry out their operations according to international oil industry standards and practices'.¹¹⁰ It is charged with the supervision and regulation of the petroleum industry in Nigeria.¹¹¹ The functions and responsibilities of the department include the enforcement of safety and environmental regulations, and ensuring that oil companies' operations conform to national and international industry standards and practices.¹¹²

In carrying out these responsibilities, the department publishes the 'Environmental Guidelines and Standards for Petroleum Industry in Nigeria' (EGASPIN) which contains guidelines and standards that oil companies should adopt to ensure good environmental performance for the purpose of protecting the Nigerian environment and improving the ecosystems services.¹¹³ The guidelines and standards are enforceable against the operators in the Nigerian oil industry in order to minimize oil pollution of the environment.¹¹⁴ The objectives include:

- i. Establishing guidelines and standards for the environmental quality control of the petroleum industry;
- ii. Providing in a single volume, a comprehensive integrated document on pollution abatement technology;

¹¹⁰ Nigeria: Department of Petroleum resources; www.dprnigeria.com/aboutus.html [accessed July 26, 2013].

¹¹¹ Ibid.

¹¹² Ibid; www.dprnigeria.com/dpr_roles.html [accessed July 26, 2013].

¹¹³ Obinna Okafor, supra at note 93, p 26.

¹¹⁴ Ibid.

- iii. Establishing guidelines and standards for petroleum activities; and
- iv. Standardizing the environmental pollution abatement and monitoring procedures for the operators in the Nigerian oil industry and other interested persons.¹¹⁵

2.3.4 NIGER DELTA DEVELOPMENT COMMISSION

The federal government of Nigeria as part of its effort to protect the environment of the Niger Delta Region passed into law the Niger Delta Development Commission (NDDC) in the year 2000 through an Act of the National Assembly.¹¹⁶ The NDDC was established with the mission of facilitating the rapid, even and sustainable development of the Niger Delta into a region that is economically prosperous, socially stable and ecologically regenerative. The mandate of the NDDC includes:

- i. tackling ecological and environmental problems that arise from the exploration of oil mineral in the region;
- ii. advising the federal government and member states of the region on the prevention and control of oil spillages and environmental pollution;
- iii. liaising with the various oil mineral producing companies on all matters of pollution prevention and control;

¹¹⁵ Section 4, Environmental Guidelines and Standards for the Petroleum Industry in Nigeria 2002; www.scribd.com/doc/132848889/EGASPIN-2002 [accessed July 26, 2013].

¹¹⁶ Niger Delta Development Commission (Establishment) Act, 2000; www.nddc.gov.ng/the%20NDDC%20ACT.pdf [accessed July 26, 2013]; Nwilo and Badejo, supra at note 104.

- iv. executing such other works and performing such other functions which in the opinion of the Commission are required for the sustainable development of the Niger Delta Region.¹¹⁷

The Commission has as part of its operational structure a 'Directorate of Environmental Protection and Control' which is in charge of the Commission's environmental mandate, and which helps the Commission in the realization of its environmental objectives.¹¹⁸

2.4 CORPORATE FRAMEWORK

The history of formalized corporate social responsibility (CSR) in Nigeria can actually be traced to the CSR practices in the oil and gas industry. The Nigerian oil sector is dominated by multinational corporations (MNCs) who often engage in CSR practices focusing mainly on remedying the effects of their activities on the local communities.¹¹⁹ As a result of the hostility from the host communities because of the negative impact of the activities of these MNCs on their environment, the MNCs have tried to gain legitimacy by embracing CSR practices.¹²⁰

Although there is no specific framework for CSR in Nigeria, some provisions in the different environmental legislations are aimed at seeing to it that MNCs contribute to the sustainability of the environment in which they operate. An example is the provision of the Niger Delta Development

¹¹⁷ Nigeria: Niger Delta Development Commission; www.nddc.gov.ng/about%20us.html [accessed July 26, 2013].

¹¹⁸ Section 9(1)(d), Niger Delta Development Commission (Establishment) Act, 2000; www.nddc.gov.ng/the%20NDDC%20ACT.pdf [accessed July 26, 2013].

¹¹⁹ (2007) Asa Helg: "Corporate Social Responsibility from a Nigerian Perspective" p 37; www.gupea.ub.gu.se/bitstream/2077/4713/1/07-23.pdf [accessed July 26, 2013].

¹²⁰ Ibid.

Commission Act¹²¹ which requires oil producing companies operating in the Niger Delta Region to pay three per cent of their total annual budget into the NDDC fund.¹²²

Being truly socially responsible has been said to involve going beyond the minimum legal requirements by corporations.¹²³ Shell Petroleum Development Company (SPDC) of Nigeria established the Niger Delta Environmental Survey (NDES) in collaboration with all members of the 'Oil Producers Trade Section of the Lagos Chambers of Commerce'.¹²⁴ The NDES was set up as an independent survey in 1995 in order to obtain authoritative and comprehensive information on the state of the Niger Delta environment that could be used for the management of the environment and support decisions on the environment.¹²⁵ The NDES is directed at developing an indicative plan for the development and management of the Niger Delta area and conducting an analysis of the causal relationships between land use, industry and the environment, to provide a baseline for future development planning.¹²⁶

Also, due to the increasing awareness of the need to prevent and control oil spills in Nigeria, 'Clean Nigeria Associates Ltd.' was established by oil

¹²¹ Section 14(2)(b), NDDC Act, *supra* at note 116.

¹²² The fund is required to aid NDDC in performing its responsibilities part of which is the environmental sustainability of the Niger Delta Region.

¹²³ (2013) Justyna Przychodzen and Wojciech Przychodzen: "Corporate Sustainability and Shareholder Wealth" *Journal of Environmental Planning and Management*, vol. 56, no. 4, p 481; www.tandfonline.com/doi/pdf/10.1080/09640568.2012.685927 [accessed July 26, 2013].

¹²⁴ (2008) Collins Ugochukwu and Jrgen Ertel: "Negative Impacts of Oil Exploration on Biodiversity Management In the Niger Delta Area of Nigeria" *Journal of Impact Assessment and Project Appraisal*, vol. 26, no. 2, p 146; www.tandfonline.com/doi/pdf/10.3152/146155108X316397A [accessed July 26, 2013].

¹²⁵ P.C. Nwilo: "Spatial Data Infrastructure: An Imperative in the Management of the Resources of the Niger Delta; <http://www.gisig.it/coastgis/papers/nwilo.htm> [accessed September 12, 2013].

¹²⁶ Ugochukwu and Ertel, *supra* at note 124.

companies operating in Nigeria as a non-profit second-tier oil spill response organization for the purpose of assisting the petroleum industry in Nigeria in the protection of the environment during the course of petroleum exploration. The objectives of the Clean Nigeria Associates include:

- i. establishing and maintaining a speedy and effective response with the capability to combat second-tier oil spills in addition to any such capability maintained by any individual member;
- ii. providing support in combating third-tier oil spills at the request of members, non-members or government agencies;
- iii. providing training programs on and conducting or supporting research into subjects pertaining to the environment;
- iv. providing waste management services in relation to oil spill clean-up activities.¹²⁷

Furthermore, MNCs in Nigeria have been partnering with the NDDC as part of their CSR strategy. The partnership between NDDC and SPDC emerged in 2003 in response to the need to consider alternative approaches to the challenges and imperatives of development in the Niger Delta Region.¹²⁸ In recognition of the importance of the role of the NDDC, the Shell companies in Nigeria resolved to actively support NDDC by participating in the development of a master plan for the development of the region. The support also extends to engaging with local and international non-governmental organizations in order to improve the understanding of stakeholders'

¹²⁷ Nigeria: Clean Nigeria Associates Ltd./Gte.; www.cnang.org [accessed July 26, 2013].

¹²⁸ (2007) Uwem Ite: "Partnering with the State for Sustainable Development: Shell's Experience in the Niger Delta, Nigeria" *Journal of Sustainable Development*, vol. 15, p 221; www.onlinelibrary.wiley.com/doi/10.1002/sd.312/pdf [accessed July 26, 2013].

grievances and expectations, and to articulate a shared vision for the development of the region as a precursor to generating and delivering effective solutions.¹²⁹

2.5 THE PETROLEUM INDUSTRY BILL

The Petroleum Industry Bill though not yet a formal law in Nigeria, has great relevance to the discussion of the legal and regulatory framework for corporate environmental responsibility in the Nigerian oil industry. A wide range of structural, regulatory, fiscal and financial challenges have made the Nigerian oil industry largely inefficient and ineffective in playing its developmental role in the country. Therefore, the government of Nigeria is embarking on reforms through the Petroleum Industry Bill (PIB) geared towards transforming the oil industry and re-positioning it for better performance.¹³⁰

The Bill is ‘for an Act to provide for the establishment of a legal, fiscal, and regulatory framework for the petroleum industry in Nigeria, and for other related matters’.¹³¹ The bill thus aims to establish a comprehensive legislation for the regulation of various aspects of petroleum operation. The objectives of the legislation would include inter alia, the protection of health,

¹²⁹ Ibid.

¹³⁰ (2011) Oyekunle A.A.: “Impact of the Petroleum Industry Bill on Deepwater Economics” paper presented at the ‘Nigeria Annual International Conference and Exhibition, 30 July - 3 August 2011, Abuja, Nigeria, p 1; www.onepetro.org/mslib/servlet/onepetropreview?id=SPE-150774-MS [accessed July 26, 2013].

¹³¹ Nigeria: Petroleum Industry Bill 2012; www.nigeria-law.org/Legislation/LFN/2012/The%20Petroleum%20Industry%20Bill%20-%202012.pdf [accessed July 26, 2013].

safety, and the environment in the course of petroleum operations and promoting a viable and sustainable petroleum industry in Nigeria.¹³²

The Bill requires a licensee engaged in upstream petroleum operations to submit an environmental management plan to the upstream petroleum inspectorate for approval. The plan shall contain the licensee's written environmental policy, objectives and targets, and commitment to comply with relevant laws, regulations, guidelines and standards. The plan shall establish initial baseline information and a program for collecting further baseline information concerning the affected environment. This is for the purpose of determining protective and remedial measures and environmental management objectives. The plan should also investigate, assess and evaluate the impact of the licensee's proposed activities on the environment. The plan is also required to describe the manner in which the licensee intends to modify, remedy, control or stop any action, activity or process which causes negative impact on the environment. Furthermore, the plan must specify how the licensee will contain or remedy the cause of such negative impact.¹³³

The licensee is also required to develop an environmental awareness plan¹³⁴ describing the manner in which it intends to inform its employees of any environmental risks which may result from their operations, and the

¹³² Section 1, Petroleum Industry Bill, *ibid*.

¹³³ *Ibid*, Section 200.

¹³⁴ The environmental management plan contains information on how a company intends to manage its business environment, while an environmental awareness plan describes how a company intends to educate and orientate its employees about the environmental management plan.

manner in which the risks are to be dealt with in order to avoid pollution or the degradation of the environment.¹³⁵

According to the Bill, the upstream petroleum inspectorate and the downstream petroleum regulatory agency shall at all times ensure the enforcement of other environmental laws, regulations, guidelines and directives issued by the federal ministry of environment and other relevant government agencies. They shall also make regulations and issue directives in consultation with the ministry of environment, specifically relating to environmental aspects of the petroleum industry.¹³⁶ All operators in the petroleum industry shall conduct their operations in accordance with internationally acceptable principles of sustainable development which includes the necessity to ensure that the constitutional right of present and future generations to a healthy environment is protected.¹³⁷ The operators shall support the precautionary approach to environmental challenges; encourage the development and use of environmentally friendly technologies for exploration and development in Nigeria and comply with the relevant requirements of environmental guidelines and standards approved for the petroleum industry in Nigeria.¹³⁸ The operators in the industry shall manage all environmental impacts in accordance with their environmental management plan or program as far as is reasonably practicable, and rehabilitate the environment affected by exploration and production

¹³⁵ Section 200, Petroleum Industry Bill, *supra* at note 131.

¹³⁶ Section 289, *ibid.*

¹³⁷ Section 291, *ibid.*

¹³⁸ Section 292, *ibid.*

operations to its pre-existing state or to a state that is in conformity with generally accepted principles of sustainable development.¹³⁹

The importance of the PIB cannot be over-emphasized. As discussed in the next chapter, major standards and principles globally accepted as a means of corporate environmental management include environmental impact assessment, and environmental management systems. Nigeria in line with international trend has enacted the Environmental Impact Assessment Act.¹⁴⁰ Although the provisions of the Act agree with the internationally accepted principles of environmental impact assessment, there are however some loopholes that need to be taken care of in the Act, as shown in subsequent chapters. The PIB also made fairly comprehensive provisions on environmental impact assessment. Aside from its provisions on EIA however, the PIB is the only framework in Nigeria that has given recognition to the internationally accepted standard of corporate environmental management systems as discussed in subsequent chapters.

2.6 CONCLUSION

In conclusion, Nigeria being a developing country could be said to possess quite an impressive number of environmental statutes and regulations regulating the oil industry. The institutional framework for the administration and enforcement of these statutes and regulations is also in place. However, this does not translate to efficacy in the regulation and control of the activities and environmental impacts of the oil companies they

¹³⁹ Section 293, *ibid.*

¹⁴⁰ Nigeria: Environmental Impact Assessment Act, 1992.

regulate. Moreover, these laws and regulations may not necessarily measure up to internationally acceptable standards and principles of corporate environmental responsibility and management.

The next chapter discusses the internationally acceptable standards and recognized principles of corporate environmental responsibility and management. The international framework will provide the standards against which the Nigerian regulatory framework may be measured.

University of Cape Town

CHAPTER THREE: INTERNATIONAL STANDARDS AND GUIDELINES ON CORPORATE ENVIRONMENTAL RESPONSIBILITY

3.1 INTRODUCTION

Having considered in the previous chapter the domestic framework for the regulation of the activities of the Nigerian oil industry and the multi-faceted impact of such activities on the environment, it is expedient to examine international standards to determine whether the Nigerian framework meets globally accepted guidelines of corporate environmental responsibility and management.

Although the regulation of exploitation of mineral oil falls within the domestic jurisdiction of states, oil industry associations; non-governmental and inter-governmental organizations develop standards, guidelines and best practices in an attempt to achieve uniform standards and practices globally.¹⁴¹ The guidelines and standards of the 'International Association of Oil and Gas Producers' (OGP) and the 'American Petroleum Institute' (API) are highly significant and influential in reference to the international oil industry, OGP because it represents oil companies all over the world and API because of the history of the United States oil companies dominating the international oil industry.¹⁴²

Notwithstanding the above, the importance of the guidelines set up by some governmental, non-governmental and intergovernmental organizations such

¹⁴¹ Alexandra Wawryk: "International Environmental Standards in the Oil Industry: Improving the Operations of Transnational Oil Companies in Emerging Economies" p. 2; www.dundee.ac.uk/cepmlp/journal/html/Vol13/article13-3.pdf [accessed August 5, 2013].

¹⁴² Ibid.

as the United Nations Environmental Program (UNEP), United Nations Global Compact (UNGC), Organization for Economic Cooperation and Development (OECD), International Organization for Standardization (ISO), the World Bank and the International Chamber of Commerce (ICC) cannot be under-estimated.¹⁴³

3.2 CONCEPT OF CORPORATE RESPONSIBILITY AND ACCOUNTABILITY

The concept of 'corporate responsibility' is premised on the stakeholder-inclusive approach to corporate governance which stipulates that companies should no longer have regard only to their shareholders but also to the society in which they operate.¹⁴⁴ The imperative and challenges of sustainability have attracted huge international attention. With regard to companies, the prevailing view is that a company should be managed in a manner that guarantees its continual operation over a long period of time. The best interest of a company should be interpreted by its managers within the parameters of the company as a sustainable enterprise and a responsible corporate citizen.¹⁴⁵ Furthermore, companies form part of the society and are citizens of the society just like a natural person. As such, companies should be and be seen to be responsible citizens.¹⁴⁶

As early as the 1972 United Nations Conference on Human Development, issues have been generated on the role of companies in the protection of the

¹⁴³ Ibid.

¹⁴⁴ (2009) Elisa Morgera: "Corporate Accountability in International Environmental Law"; p. 18.

¹⁴⁵ Summary of Report on Governance for South Africa, 2009 (King 111), <http://www.auditor.co.za/Portals/23/king%20111%20saica.pdf> [accessed August 5, 2013].

¹⁴⁶ Ibid.

environment and the necessity of integrating environmental concerns into corporate decisions.¹⁴⁷ Thus, corporate responsibility integrates environmental values and concerns into corporate conduct in conformity with national and international laws and regulations.¹⁴⁸ It also presupposes that companies consider environmental implications of their actions whether or not they are obliged by any law to do so.¹⁴⁹

Corporate responsibility emphasizes the need for companies to demonstrate a standard of conduct that surpasses the requirements of law, to ensure substantive corporate contribution to environmental protection and sustainable development.¹⁵⁰ As OECD puts it, sound environmental management is an important aspect of corporate responsibility; thus, company managers should give appropriate attention to environmental issues within their business strategies.¹⁵¹ Sound environmental management includes activities that control the direct and indirect impact of corporate activities on the environment over the long term and which involves pollution control and resource management elements.¹⁵²

‘Corporate accountability’ refers to the manner in which companies are answerable for their decisions and operations, on the basis of internationally defined and implemented standards.¹⁵³ It refers to the need for procedural standards, thus focusing on the indirect means of ensuring the

¹⁴⁷ Elisa Morgera, *supra* at note 144, p. 11.

¹⁴⁸ *Ibid*, p. 18.

¹⁴⁹ *Ibid*.

¹⁵⁰ *Ibid*, p. 22.

¹⁵¹ (2011) OECD: “Guidelines for Multinational Enterprises”, p. 44; www.oecd.org/daf/inv/mne/48004323.pdf [accessed August 5, 2013].

¹⁵² *Ibid*, p 45.

¹⁵³ Elisa Morgera, *supra* at note 144, p 20.

environmentally sound conduct of companies based on public expectations.¹⁵⁴

These concepts of corporate responsibility and accountability give rise to certain principles and standards of corporate environmental responsibility and management which have been accepted globally and are discussed below.

3.2.1 CORPORATE ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

This involves the assessment by companies of the environmental impact of a proposed project prior to its implementation and taking such impact into consideration while making decisions concerning the project.¹⁵⁵ The system of EIA has been widely accepted in many jurisdictions as a measure of promoting environmental protection. EIA requirements are contained in national laws, international treaties, industry guidelines and some international financial institutions impose EIA as a condition for lending their support to developmental companies' projects.¹⁵⁶

International organizations, non-governmental and intergovernmental organizations have emphasized the importance of this in corporate environmental management. According to the OECD, companies should assess, and address in decision making any likely environmental impact of their activities so as to avoid or mitigate such an impact or impacts.¹⁵⁷ The United Nations Rio Declaration stipulates that EIA should be conducted in

¹⁵⁴ Ibid, pp. 22-23.

¹⁵⁵ Alexandra Wawryk, *supra* at note 141, p 5.

¹⁵⁶ Ibid., p 7.

¹⁵⁷ OECD, *supra* at note 151, p 43.

respect of proposed activities that may have significant negative impact on the environment.¹⁵⁸

The system of EIA has been widely accepted in many jurisdictions, although the scope and manner of its operation varies in these jurisdictions.¹⁵⁹ EIA requirements are contained in national laws, international treaties, industry guidelines, and even international financial institutions impose EIA as a condition for assisting developmental companies.¹⁶⁰ In Europe, the European Council urges member-states to adopt all necessary mechanisms to ensure that projects likely to have significant environmental impact are subjected to an EIA before consent is given for such projects. A project developer seeking development consent from a competent authority must supply detailed information such as a description of the proposed activity, an outline of any alternatives studied by the developer and the reasons for the choice made by the developer considering the environmental impact of such a choice.¹⁶¹ The information must also include a description of the aspects of the environment that may possibly be affected significantly by the proposed activity, a description of the possible significant impact and a description of the measures intended to prevent, reduce, and where possible offset any such significant impact on the environment.¹⁶²

¹⁵⁸ (1992) United Nations: "Rio Declaration on Environment and Development", principle 17; www.weltvertrag.org/e375/e719/e1008/UnitedNations_eng.pdf [accessed August 5, 2013].

¹⁵⁹ (2002) Mark Stallworthy: "Sustainability, Land Use and Environment: A Legal Analysis", p 133

¹⁶⁰ Wawryk, *supra* at note 141, p 7.

¹⁶¹ European Union (1997): Environmental Impact Assessment Directive, Article 1(7) read with Annex IV; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1997:073:0005:0015:EN:PDF> [accessed August 31, 2013].

¹⁶² *Ibid.*

In South Africa, an impact assessment must be conducted for all activities that may have significant environmental impact.¹⁶³ The EIA process comprises of a scoping phase, preparation of an EIA report, specialist studies, public participation and preparation of an environmental management plan.¹⁶⁴ The Minister of Water and Environmental Affairs pursuant to the National Environmental Management Act made regulations pertaining to environmental impact assessments.¹⁶⁵ The regulations identified two types of assessment which include a basic assessment, and scoping and environmental impact reporting.¹⁶⁶ Both types of assessment share similar procedures and requirements, except for a basic assessment that do not require an environmental management plan. An application for an environmental authorization must be subjected to scoping which involves an identification of issues that will be relevant in considering the application, the possible environmental impact of the proposed activity and feasible and reasonable alternatives to the proposed activity.¹⁶⁷ An EIA must then be conducted and an assessment report prepared. The report must contain a detailed description of the proposed activity and the environment that may be impacted by the activity, of the need and importance of the activity, a description and comparative analysis of identified possible alternatives to the activity, and a disclosure of the manner by which the

¹⁶³ SADC Environmental Legislation Handbook (2012), p 331;
www.saiea.com/dbsa_handbook_update2012/pdf/chapter12.pdf [accessed August 26, 2013].

¹⁶⁴ Ibid.

¹⁶⁵ South Africa: Environmental Impact Assessment Regulations (2010);
www.environment.co.za/documents/legislation/EIA/2010-eia-legislation-regulations-south-africa/EIA-Environmental-Impact-Assessment-Regulations-South-Africa-2010-South-Africa.pdf [accessed August 21, 2013].

¹⁶⁶ Ibid.

¹⁶⁷ Regulation 27(e), EIA Regulations, *ibid.*

significance of potential environmental impact was determined.¹⁶⁸ The report must also include a summary of the findings and recommendations of any specialist report, an assessment of all issues identified and an indication of the extent to which the issues could be addressed by mitigation measures, and a description of any assumptions, uncertainties, and gaps in knowledge.¹⁶⁹ The report should contain an environment impact statement stating a summary of the key findings of the EIA, a comparative assessment of the positive and negative implications of the proposed activity and identified alternatives.¹⁷⁰

OGP encourages that oil companies integrate environmental assessment into all aspects of project planning and implementation.¹⁷¹ According to OGP, components of EIA include goal definition and scoping, information collection, impact assessment, control of effects, and follow-up and implementation.¹⁷² Scoping provides for the identification of stakeholders, understanding of the legal requirements, determination of the likelihood and extent of potential impact, and preliminary identification and prioritization of significant issues.¹⁷³ During information collection, information useful for quantifying impact, designing appropriate mitigation, and addressing issues identified during scoping are gathered. Impact assessment brings project information together with baseline data to estimate the timing, likelihood, magnitude, and duration of potential impact. Impact mitigation,

¹⁶⁸ Regulation 31(2), *ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*

¹⁷¹ (2002) OGP: "Principles for Impact Assessment: The Environmental and Social Dimension"; www.ogp.org.uk/pubs/265.pdf [accessed August 5, 2013].

¹⁷² *Ibid.*

¹⁷³ *Ibid.*

management and monitoring plans are developed and alternatives considered.¹⁷⁴ Follow-up and implementation consist of the continual monitoring of the project implementation through the entire project cycle, so as to ensure compliance, and serve as a tool to evaluate and update mitigation strategies.¹⁷⁵

As part of its bid to minimize and manage environmental impacts in Australia, the 'Australian Petroleum Production and Exploration Association' (APPEA) recommends that members assess the risks to and impacts on the environment of their activities as an integral part of the process of planning such activities.¹⁷⁶

The World Bank in its support for environmental protection "requires an environmental assessment of projects proposed for bank financing to help ensure that they are environmentally sound and sustainable, and thus to improve decision-making".¹⁷⁷ According to the World Bank, the EIA should be initiated at an early stage of the project processing. The EIA process should include an environmental screening of each proposed project to determine the appropriate extent of environmental impact and type of environmental assessment, the assessment proper, and the preparation of an assessment report.¹⁷⁸ The assessment report should include an executive

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ APPEA: "Code of Environmental Practice" p 4; www.appea.com.au/wp-content/uploads/2013/05/Code_of_Environmental_Practice.pdf [accessed August 5, 2013].

¹⁷⁷ (1999) The World Bank Operational Manual: "Operational Policies" p 1; www.siteresources.worldbank.org/INTFORESTS/Resources/OP401.pdf [accessed August 5, 2013]

¹⁷⁸ The World Bank: OP 4.01- Environmental Assessment (2013); <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064724~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html> [accessed August 29, 2013].

summary; policy, legal, and administrative framework; project description; baseline data; environmental impact; analysis of alternatives; and an environmental management plan.¹⁷⁹ In the course of implementing the project, the company is required to report to the bank on its compliance with measures agreed with the bank on the basis of its assessment report, the status of its mitigation measures and the report of its monitoring program.¹⁸⁰

The ICC representing global business encourages companies “to assess environmental impacts before starting a new activity or project and before decommissioning a facility or leaving a site”.¹⁸¹

3.2.2 CORPORATE ENVIRONMENTAL MANAGEMENT SYSTEM (EMS)

EMS consists of procedures which enable corporate managers to comply with legal requirements and manage corporate processes for controlling the impact of their companies’ activities on the environment.¹⁸² EMS involves activities the objectives of which are the control of environmental impact over the longer term, including pollution control and resource management.¹⁸³ It provides the internal framework that is needed to control corporate environmental impact as well as to integrate environmental considerations into corporate decisions.¹⁸⁴ An EMS should enable

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ (2000) ICC: “Business Charter for Sustainable Development”, Principle 5; www.iccwbo.org/advocacy-codes-and-rules/areas-of-work/environment-and-energy/business-charter-for-sustainable-development [accessed August 5, 2013].

¹⁸² Alexandra Wawryk, *supra* at note 141, p 11.

¹⁸³ (2012) Stephen Tully: “International Corporate Legal Responsibility”, p 413.

¹⁸⁴ (2009) Elisa Morgera: “Corporate Accountability in International Environmental Law”, p 181; OECD, *supra* at note 144, p 44.

organizations to achieve and demonstrate continuous compliance with environmental regulations and also allow organizational control of the impact of their activities on the environment in compliance with their environmental policy and objectives.¹⁸⁵ The OECD in encouraging companies to protect their business environment, recommends that companies establish and maintain an environmental management system.¹⁸⁶ According to OECD, such systems of environmental management should include the collection and evaluation of adequate and timely information regarding the environmental impact of companies' activities and establishment of measurable objectives and targets for improved environmental performance which are consistent with relevant national policies and international environmental commitments. The system should also include procedures for regular monitoring and verification of progress towards corporate environmental objectives and targets.¹⁸⁷

The UN Global Compact from the United Nation's perspective encourages companies to undertake initiatives to promote greater environmental responsibility by putting in place a system of environmental management to help in meeting their organizational environmental challenge.¹⁸⁸ The ICC recommends that companies "recognize environmental management as among the highest corporate priorities and as a key determinant to

¹⁸⁵ South African Bureau of Standards: "Environmental Management Services: SABS ISO 14000 Series"; https://www.sabs.co.za/Sectors-and-Services/Services/EMS/ems_seriesofstandards.asp [accessed August 21, 2013].

¹⁸⁶ OECD, *supra* at note 151, p 42

¹⁸⁷ *Ibid.*

¹⁸⁸ The United Nations Global Compact, Principle 8; www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle8.html [accessed August 7, 2013].

sustainable development and to establish policies, programs, and practices for conducting operations in an environmentally sound manner”.¹⁸⁹

The ISO “provides practical tools for companies and organizations looking to identify and control their environmental impact and constantly improve their environmental performance”.¹⁹⁰ Thus, ISO through its ISO 14001 has set out criteria for an EMS and mapped out a framework which a company can adapt in setting up an effective EMS.¹⁹¹ The European Union through its ‘Eco-Management and Audit Scheme’ (EMAS) has identified with the system of environmental management.¹⁹² The European Commission developed EMAS as a management instrument “for companies and other organizations to evaluate, report and improve their environmental performance”.¹⁹³ EMAS Regulation requires all participating companies to prepare a validated environmental statement which shall contain the environmental policy and a description of the EMS of the company.¹⁹⁴

The ‘International Association of Oil and Gas Producers’ (OGP) published its ‘Guidelines for the Development and Application of Health, Safety and Environmental Management Systems’ which has its provisions consistent with the ISO’s standard.¹⁹⁵ The American Petroleum Institute published the ‘Model Environmental, Health and Safety Management System and

¹⁸⁹ ICC, supra at note 181, Principle 1.

¹⁹⁰ ISO; www.iso.org/iso/home/standards/management-standards/iso14000.htm [accessed August 8, 2013].

¹⁹¹ Ibid.

¹⁹² Stephen Tully, supra at note 183, p 414.

¹⁹³ European Union: “Eco-Management and Audit Scheme”; www.ec.europa.eu/environment/emas [accessed August 8, 2013].

¹⁹⁴ EU: EMAS Regulations (2009), Section B, Annex IV; www.ems.iema.net/stream.php/docs/downloads/EMAS%2011%20reg.pdf [accessed August 15, 2013].

¹⁹⁵ Wawryk, supra at note 141, p. 13; E & P Forum: “Guidelines for the Development and Application of Health, Safety and Environmental Management Systems”, 1994; www.ogp.org.uk/pubs/210.pdf [accessed August 10, 2013].

Guidance Document’ to assist companies in the development or enhancement of a system of environmental, health and safety management.¹⁹⁶ The United Kingdom through the ‘British Standards Institute (BSI)’ also supports the system of environmental management.¹⁹⁷ The BSI published ‘BS 8555’ the provisions of which are based on the principles contained in ISO 14001 and the EMAS Regulation, and which provides guidance to companies on the phased implementation, maintenance and improvement of a formal EMS.¹⁹⁸ Similarly, to ensure that companies and industries in South Africa are environmentally responsive, the South African Bureau of Standards developed ‘SABS ISO 14000 Environmental Standard’ in association with ISO.¹⁹⁹

3.2.3 CORPORATE ENVIRONMENTAL MONITORING AND AUDITING

Environmental monitoring is the regular and continual check, inspection or examination of corporate activities and their effect on the environment.²⁰⁰ It entails the monitoring of the impact that a company’s activities leave on its operating environment, the state of the operating environment, and the implementation and performance of the company’s EMS.²⁰¹ The system of monitoring enables companies to comply with environmental regulations and any conditions attached to a company’s developmental project as a

¹⁹⁶ Wawryk, *ibid*, p. 14.

¹⁹⁷ Stephen Tully, *supra* at note 183.

¹⁹⁸ British Standards Institute’s BS 8555, (2003);

<http://shop.bsigroup.com/en/ProductDetail/?pid=000000000030077920> [accessed August 21, 2013].

¹⁹⁹ South African Bureau of Standards: “Environmental Management Services”;

<https://www.sabs.co.za/Sectors-and-Services/Services/EMS/index.asp> [accessed August 21, 2013].

²⁰⁰ Wawryk, *supra* at note 141, p 17.

²⁰¹ *Ibid*.

result of its EIA as well as its corporate environmental management systems.²⁰²

The OECD guidelines recommend that companies collect and evaluate adequate and timely information regarding the environmental impacts of their activities.²⁰³ This is one way through which companies can monitor their environmental impact and performance against their corporate environmental management systems. EMAS as part of its efforts in contributing to global environmental protection requires participating companies to “establish, implement and maintain a procedure to monitor and measure on a regular basis the key characteristics of its operations that can have significant environmental impact”.²⁰⁴ OGP on its own part requires oil companies to maintain procedures for monitoring their environmental performance and for establishing and maintaining records of the results.²⁰⁵

Environmental auditing “is a systematic, periodical, evaluation of a company’s environmental organization, performance and systems as against pre-determined standards”.²⁰⁶ It also refers to “a systematic, documented, periodic and objective review by regulated entities of facility operations and practices related to meeting environmental requirements”.²⁰⁷ Thus, considerations regarding whether a company’s EMS meets with identifiable expectations or criteria, or whether the company’s activities are in

²⁰² Ibid.

²⁰³ OECD, *supra* at note 151, p 42.

²⁰⁴ EMAS Regulation *supra* at note 194, Annex 11, A.5.

²⁰⁵ E & P Forum, *supra* at note 195, p 23.

²⁰⁶ Wawryk, *supra* at note 141, p 18.

²⁰⁷ (2000) United States Environmental Protection Agency: “Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations” p 36;
www.epa.gov/compliance/resources/policies/incentives/auditing/finalpolstate.pdf [accessed August 12, 2013].

compliance with its EMS constitute environmental audit. Environmental audit also serves as a tool to determine whether an EMS is properly implemented and maintained. In this regard, the ISO has laid down some guidelines on the principles of auditing, managing audit programs, the conduct of audits, and the competence of auditors.²⁰⁸

The EMAS regulation requires participating companies to ensure that internal audits of their EMS are conducted periodically to “determine whether it conforms to planned arrangements for environmental management and has been properly implemented and maintained”.²⁰⁹ According to the regulation, the objective of the audit should include the assessment of the company’s management system to determine whether it conforms to its corporate policy and program including compliance with relevant environmental regulatory requirements.²¹⁰

OGP requires companies to maintain procedures for audits to be carried out as a normal part of their business control so as to determine whether their EMS elements and activities conform to planned arrangements and are implemented effectively. The audit is also required to show if the EMS is effective in fulfilling the companies’ environmental policy and whether it satisfies their performance criteria. Audits should indicate if an EMS complies with relevant legislative requirements and identify areas for improvement that can lead to the company’s better environmental

²⁰⁸ ISO 19011, “ISO Environmental Management: The ISO 14000 Family of International Standards” (2009), p 6; www.iso.org/iso/theiso14000family_2009.pdf [accessed August 19, 2013].

²⁰⁹ EMAS Regulation, *supra* at note 194, Annex 11, A.5.5.

²¹⁰ EMAS Regulation, *ibid*, Annex 11.1.

management.²¹¹ The ICC recommends that businesses conduct regular environmental audits and assessments of compliance with company and legal requirements as well as the principles of the ICC business charter for sustainable development as a basis for sound environmental management.²¹²

There is clearly a strong international regulatory framework for environmental monitoring and auditing as well as for environmental evaluation which is discussed next.

3.2.4 CORPORATE ENVIRONMENTAL PERFORMANCE EVALUATION

This refers to “a management tool or process designed to ensure the ongoing measurement and improvement of an organization’s environmental performance”.²¹³ The evaluation of environmental performance enables companies to ascertain the effectiveness of their EMS in generating genuine improvement with respect to the impact of their activities on the environment.²¹⁴

In its bid to promote greater environmental responsibility, the UN Global Compact encourages companies to measure and track their progress in incorporating sustainability principles into their business practices.²¹⁵ The ISO published the ISO 14031 which provides guidance on how companies can evaluate their environmental performance. The ISO 14031 also

²¹¹ E & P Forum, supra at note 195, p 25.

²¹² ICC Business Charter for Sustainable Development, supra at note 181, Principle 16.

²¹³ Wawryk, supra at note 141, p 15.

²¹⁴ (1999) Martin Bennett & Peter James, with Leon Klinkers (eds.): “Sustainable Measures: Evaluation and Reporting of Environmental and Social Performance”, p 76.

²¹⁵ UN Global Compact, supra at note 188, Principle 8.

addresses the selection of suitable performance indicators so that performance can be assessed against criteria set by management.²¹⁶ OGP also recommends that corporate managers should periodically review their companies' EMS and its performance to ensure its continuing suitability and effectiveness.²¹⁷ EMAS requires participating companies "to establish, implement, and maintain procedures for periodically evaluating compliance with applicable legal requirements and other requirements to which it subscribes and obliges companies to keep records of the results of the periodic evaluations".²¹⁸ The ICC recommends that companies measure their environmental performance in relation to their compliance with company and legal requirements as well as the principles of the ICC business charter for sustainable development.²¹⁹

The most significant aspect of the performance evaluation system is the choice of meaningful indicators by companies to use as a standard for measuring their environmental performance.²²⁰ There are however various sources of information including; standards, guidelines, or documents published by regulatory and industry bodies such as API and OGP; and organizations such as the ISO and the World Bank; from which oil companies can compile indicators for the measurement and evaluation of their environmental performance.²²¹ EMAS in its regulation listed some core

²¹⁶ ISO Environmental Management, *supra* at note 208.

²¹⁷ E & P Forum, *supra* at note 195, p 26.

²¹⁸ EMAS Regulation, *supra* at note 194, Annex 11, A.5.2.

²¹⁹ ICC Business Charter for Sustainable Development, *supra* at note 181, Principle 16.

²²⁰ Wawryk, *supra* at note 141, p 15.

²²¹ *Ibid.*

indicators such as energy efficiency, material efficiency, water, waste, biodiversity, and emissions.²²²

3.2.5 CORPORATE ENVIRONMENTAL REPORTING

This refers to the means and process by which companies disclose or communicate information on their environmental activities to their stakeholders.²²³ Companies generally are faced with an intense pressure to disclose information concerning their environmental performance to governments and the public.²²⁴ This can be deduced from the various mandatory disclosure requirements and voluntary reporting initiatives published recently.²²⁵ For example, the United Nations Global Compact requires businesses to communicate their progress in incorporating sustainability principles into their business practices.²²⁶ In the European Union, the development of an initiative to encourage companies to publish rigorous and independently verified environmental performance reports is regarded as necessary to meeting corporate environmental objectives.²²⁷ EMAS requires all participating companies to prepare an environmental statement which shall be validated by an accredited or licensed environmental verifier.²²⁸ The statement shall contain the environmental policy and description of the EMS of the company, a description of all activities of the company which result in significant environmental impacts,

²²² EMAS Regulation, *supra* at note 194, Annex IV, C.2(a).

²²³ (2008) Alok K. Pramanik, Nikhil C. Shil, Bhagaban Das: "Corporate Environmental Reporting: An Emerging Issue in the Corporate World", *International Journal of Business and Management*, Vol. 3, No. 12, p 149; www.ccsenet.org/journal/index.php/ijbm/article/download/767/740 [accessed August 19, 2013].

²²⁴ Wawryk, *supra* at note 141, p 20.

²²⁵ *Ibid.*

²²⁶ United Nations Global Compact, *supra* at note 188, Principle 8.

²²⁷ EMAS Regulations, *supra* at note 194, section 2 Proviso.

²²⁸ Article 4(1)(d) & (5), EMAS Regulations, *ibid.*

and an explanation of the nature of such impacts.²²⁹ It shall furthermore contain a description of the environmental objectives and targets of the company in relation to its activities and their impacts; a summary of the data available on the company's performance against its environmental objectives and targets; and reference to the applicable legal requirements relating to the environment.²³⁰ EMAS requires openness and transparency in the environmental reporting process; and a periodic provision of the said environmental information.²³¹

The principle of environmental reporting also forms part of the ICC's business charter for sustainable development which recommends that companies periodically provide appropriate information to the board, shareholders, employees, authorities, and the public.²³² Another international initiative that promotes the reporting system is the 'Global Reporting Initiative'. It produces guidelines on reporting principles and standard disclosures along the triple bottom line of business which include economic, social, and environmental indicators. It supplements this with an implementation manual for the preparation of sustainability reports by companies across all sectors.²³³ The ISO has published an international standard to guide companies on the general principles, policy, strategy, methods, and practices relating to environmental communication.²³⁴ The United Nations Environmental Program in collaboration with SustainAbility

²²⁹ Section B, Annex IV, EMAS Regulations, *ibid*.

²³⁰ *Ibid*.

²³¹ EMAS Regulations, *ibid*, Annex 11, B.5(2).

²³² ICC Business Charter for Sustainable Development, *supra* at note 181, Principle 16.

²³³ GRI: G4 Sustainability Reporting Guidelines; www.globalreporting.org/reporting/g4/Pages/default.aspx [accessed August 19, 2013].

²³⁴ ISO: ISO14063; <http://inni.pacinst.org/inni/Communication/14063CD2.pdf> [accessed August 19, 2013].

Ltd. has also lent its support to the principle of environmental reporting by corporate organizations.²³⁵

Some countries have also imposed mandatory disclosure requirements on corporate environmental activities. In Denmark, companies that require environmental licenses are obliged to prepare green accounts which state the companies' consumption of energy, water and raw materials, and their emission of substances that are harmful to the environment.²³⁶

3.3 CONCLUSION

Internationally accepted practice of corporate environmental management involves assessment by companies of the potential impact of an activity on the environment before such an activity is implemented. Complementary to this is the development and implementation of practices to promote the management of the impact of a company's activities on the environment. Furthermore, companies are required to engage in continuous evaluation and improvement of their environmental performance, published in publicly accessible reports.

The next chapter considers how well the domestic legal framework in Nigeria discussed in chapter two embraces these international standards and guidelines. It also explores how these international standards and guidelines can be implemented and enforced in the Nigerian oil industry.

²³⁵ UNEP/SustainAbility: "Engaging Stakeholders"; www.enviroreporting.com/others/unep_eng.htm [accessed August 19, 2013].

²³⁶ EU Environmental Rules-Denmark; www.europa.eu/youreurope/business/doing-business-responsibly/keeping-to-environmental-rules/denmark/index_en.htm [accessed August 19, 2013].

CHAPTER FOUR: TOWARDS CORPORATE ENVIRONMENTAL RESPONSIBILITY IN AND CORPORATE SUSTAINABILITY OF THE NIGERIAN OIL INDUSTRY

4.1 INTRODUCTION

In spite of the various legal and regulatory regimes on the environmental impact of the activities of oil companies, the operating environment of these companies is still in a state of extreme degradation and pollution. The oil companies do not seem to be operating in a responsible and sustainable manner. One reason for this as identified from this research is that most of the subsisting laws directly regulating the said impact do not measure up to international standards. The Petroleum Act made fairly comprehensive regulations for the general operations of the oil industry in Nigeria. The Oil Pipelines Act merely provides for the licensing and regulation of oil pipeline construction. The NOSDRA Act merely establishes NOSDRA to coordinate oil spill management. The EIA Act which would have been the best environmental regulatory instrument for the industry lags behind in some significant provisions as identified later on in this chapter.

The Petroleum Industry Bill (PIB) which is a comprehensive and improved version of these laws does not contain a detailed provision with respect to enforcement techniques. This gap is also identified in the subsequent part of this chapter. Moreover, the PIB is yet to be passed into a formal law by the Nigerian legislature.

Furthermore, none of the laws, except the PIB, recognized or made any provisions relating to corporate environmental management systems (EMS).

The previous chapter covered international standards and guidelines on corporate environmental responsibility. It is submitted, based on findings in that chapter, that the major corporate environmental responsibility frameworks accepted and practiced globally include corporate environmental impact assessment (EIA) and corporate environmental management systems (EMS). It must be noted however that other international standards discussed such as environmental performance evaluation; environmental monitoring and auditing; and environmental reporting are systematically integrated into the system of environmental management.

This chapter will therefore discuss how corporate environmental impact assessment can be implemented and enforced in the Nigerian oil industry, as well as how oil companies operating in Nigeria can develop and implement a system of environmental management, taking a lead from other jurisdictions as well as from international standards.

4.2 ENVIRONMENTAL IMPACT ASSESSMENT IN NIGERIA

In conformity with international environmental impact assessment (EIA) standards and principles, and as mentioned in chapter two, the Nigerian Environmental Impact Assessment Act²³⁷ mandates all companies to submit any of their projects or activities likely to have serious environmental impact on the Nigerian environment to an EIA before such projects or activities are

²³⁷ Nigeria: Environmental Impact Assessment Act, *supra* at note 94.

commenced.²³⁸ Furthermore, the Act provides that such EIA must consider alternative means of carrying out such projects and identify ways to mitigate such adverse environmental impacts.²³⁹ The EIA process in Nigeria just like in other jurisdictions encompasses several stages. The first stage is the screening or mandatory study of a project for potential environmental impacts and the preparation of a screening report. The second stage involves the assessment of the potential environmental impacts by a review panel and the preparation of an assessment report. The final stage is the design and implementation of a follow-up program.²⁴⁰ According to the Act, an EIA should also include a description of the proposed project and the potential affected environment; an indication of gaps in knowledge and uncertainty which may be encountered in computing the required information.²⁴¹

In spite of these provisions which are in conformity with internationally accepted principles of EIA, EIA still appears not to be implemented by oil companies operating in Nigeria. The environment where the companies operate have been degraded by oil induced fire and oil pollution. It has also been discovered that the environment experiences severe impoverishment from the incidence of oil induced fire outbreaks and oil spills.²⁴² Hence, this section will discuss the implementation techniques observed in the EIA process of other jurisdictions which are not comprehensively provided for in the EIA Act in Nigeria, and which companies in the Nigerian oil industry can emulate in their EIA processes.

²³⁸ Section 3(1), EIA Act, *ibid.*

²³⁹ Section 17, EIA Act, *ibid.*

²⁴⁰ Section 16, EIA Act, *ibid.*

²⁴¹ Section 4, EIA Act, *ibid.*

²⁴² Eregha P.B. and Irughe I.R., *supra* at note 63.

The World Bank requires companies whose proposed projects are undergoing EIA to consult groups and NGOs that would be affected by the project about the project's environmental aspects and take their views into account. Such companies are required to initiate the consultation as early as possible and such consultation must take place throughout the project implementation so that the stakeholders can address environmental assessment related issues that affect them. The companies before initiating such consultation must provide relevant material in a timely manner and in a form and language understandable and accessible to the groups being consulted.²⁴³

OGP emphasizes the importance of stakeholder engagement during EIA. OGP identifies stakeholder engagement as the primary method by which companies can address the challenges of EIA for specific projects. According to OGP, stakeholder engagement helps companies to identify and involve stakeholders; understand stakeholders' needs, concerns, ideas and values.²⁴⁴ Effective consultation provides clear, accurate, understandable and timely information to stakeholders about a proposed project and its potential impacts on the stakeholders.²⁴⁵

In Europe, the European Union (EU) requires the public to be informed of any request for development consent for a project which might impact on the environment. The public shall be informed whether by public notices or by other appropriate means. The notice must contain the fact that the

²⁴³ OP 4.01- Environmental Assessment, *supra* at note 178.

²⁴⁴ OGP (1997) "Principles for Impact Assessment: The Environmental and Social Dimension" p 5; www.ogp.org.uk/pubs/265.pdf [accessed August 28, 2013].

²⁴⁵ *Ibid.*

proposed project for which the development consent is sought is subject to an EIA. It must also contain details of the competent authority responsible for taking a decision on the request, from which relevant information about the proposed project and the application can be obtained and to which comments and questions can be submitted. It must also indicate time frames for submitting questions and comments, the availability of relevant information, the times and places in which and the means by which the relevant information will be made available as well as the details of the arrangements for public participation.²⁴⁶

Information relevant to the application and which must be made available to the public include a description of the proposed project, an outline of the main alternatives studied by the developer and the reasons for the preferred choice given its environmental impact. Other information to be provided include the data required to identify and assess the main effects which the project is likely to have on the environment, and a description of measures envisaged to prevent, reduce, or where possible, remedy such significant impact.²⁴⁷ The opinions expressed and any information gathered from such public consultation must be considered by the competent authority in the development consent procedure.²⁴⁸ When a decision is taken on the development consent, the competent authority shall inform the public of the decision. The competent authority shall also make available the content of the decision and any conditions attached to it as well as the reasons for the

²⁴⁶ EU: DIRECTIVE 2011/92/EU, Article 6(2); <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:026:0001:0021:EN:PDF> [accessed August 29, 2013].

²⁴⁷ Article 5(3), *ibid.*

²⁴⁸ Article 8, *ibid.*

decision. If the consent is granted, the competent authority is also required to provide a description of the main measures to prevent, reduce and where possible, remedy major adverse environmental effects of the project.²⁴⁹

In South Africa, an Environmental Assessment Practitioner (EAP) must give notice to all potential interested and affected parties of the application by any natural or legal person for an environmental authorization. This can be done by the EAP fixing a notice board at a place conspicuous to the public, giving written notice, placing advertisements in newspapers and an official gazette, or using any other reasonable methods in the instance where a person desires but is unable to participate in the process due to a disadvantage such as illiteracy and disability.²⁵⁰ Such notice must give details of the application, the nature and location of the activity to which the application relates, where further information on the activity or application can be obtained, the manner in which and the person to whom representations in respect of the application may be made.²⁵¹ The EAP must ensure that information containing all relevant facts in respect of the application is made available to potential interested and affected persons and that participation is facilitated in a manner that provides such persons with a reasonable opportunity to comment on the application.²⁵²

²⁴⁹ Article 9, *ibid.*

²⁵⁰ RSA Department of Environmental Affairs (2010) "Environmental Impact Assessment Regulations", Regulation 54(2); www.environment.co.za/documents/legislation/EIA/2010-eia-legislation-regulations-south-africa/EIA-Environmental-Impact-Assessment-Regulations-South-Africa-2010-South-Africa.pdf [accessed August 29, 2013].

²⁵¹ Regulation 54(3), *ibid.*

²⁵² Regulation 54(7), *ibid.*

An EAP is required to open and maintain a register containing names and contact details of all interested or affected persons.²⁵³ A registered interested or affected person is entitled to comment in writing on all submissions made by the applicant to the competent authority and to bring to the attention of the competent authority any issues that may be of significance to the consideration of the application.²⁵⁴ The EAP is required to record comments of interested or affected persons in environmental reports relating to the application and attach such comments, including records of meetings to the environmental report required to be submitted to the competent authority by the applicant.²⁵⁵ Where an interested or affected person desires but is unable to access written comments due to any disadvantage such as illiteracy, reasonable alternative methods of recording comments must be provided for such a person.²⁵⁶

When EIA provisions in other jurisdictions discussed above are compared with the EIA provisions in Nigeria, it becomes clear why EIA in Nigeria has been very ineffective. Common to the EIA provisions examined above is the designation of a competent authority for the administration of the EIA procedures. In Nigeria, the Department of Petroleum Resources (DPR) is charged with the administration of EIA by oil companies. The DPR cannot however be said to be a competent authority for the discharge of this obligation. This is because the DPR is an agent of the federal government's organ responsible for the development of the oil sector and as such, it is like

²⁵³ Regulation 55(1), *ibid.*

²⁵⁴ Regulation 56(1), *ibid.*

²⁵⁵ Regulation 57(1), *ibid.*

²⁵⁶ Regulation 57(2), *ibid.*

an insider and cannot objectively regulate the environmental activities of the oil companies. This obvious conflict of interest needs to be addressed.

Secondly, there is no detailed provision regarding public participation in the entire EIA process. The EIA Act only requires the DPR to give opportunity to government agencies, members of the public, experts in any relevant discipline, and integrated groups to comment on the EIA of an activity before a decision is taken on such an activity by the DPR.²⁵⁷ Furthermore, the DPR is obliged to consider such comments received before giving a decision on an application for environmental authorization.²⁵⁸ Finally, the decision of the DPR is required to be in writing with reasons for the decision and provisions if any to prevent, reduce, or mitigate damage to the environment stated. The decision shall be made available to interested persons or groups.²⁵⁹

It is submitted that no matter how good these provisions may seem to be, they are clearly inadequate as they merely provide an opportunity for public participation but fail to provide for procedures of actually conducting the public participation. Thus, it is clear that even though the EIA Act gives an opportunity for stakeholder involvement in EIA processes, it fails to indicate how the opportunity is to be utilized.

Thirdly, the EIA Act, in a bid to provide for the adoption of an environmental management plan during the implementation of the proposed project, made

²⁵⁷ Section 7, EIA Act, *supra* at note 94.

²⁵⁸ Section 8, *ibid.*

²⁵⁹ Section 9, *ibid.*

reference to the design and implementation of a follow-up program.²⁶⁰ This is grossly inadequate compared to the EIA provisions of other jurisdictions. For instance, in South Africa, an application for environmental authorization is required to be supported by an environmental management program (EMP). The EMP must include inter alia, information on any proposed management or mitigation measures to be taken to address the environmental impact identified, an identification of persons responsible for the implementation of the mitigation measures, proposed mechanisms for monitoring compliance with and performance assessment against the EMP and reporting thereon as well as measures to rehabilitate the environment affected by any environmental impact.²⁶¹ The EMP must also indicate time frames within which the mitigation measures must be implemented, the process for managing any environmental damage, pollution arising from the project for which an authorization is sought, an environmental awareness plan and where appropriate, a closure plan.²⁶²

The World Bank also requires an assessment report to provide for an environmental management plan. The EMP should consist of the mitigation, monitoring and institutional measures to be taken during the project implementation, and the actions needed to implement these measures. This is in a bid to prevent adverse environmental impact, offset or reduce them to acceptable levels.²⁶³ According to the World Bank, such mitigation measures include feasible and cost effective measures that may reduce potentially

²⁶⁰ Section 16, *ibid.*

²⁶¹ Regulation 33, RSA EIA Regulations, *supra* at note 165.

²⁶² *Ibid.*

²⁶³ The World Bank: "OP 4.01- Environmental Assessment", *supra* at note 178.

significant adverse environmental impact to acceptable levels. Monitoring measures provide information about key environmental aspects of the project especially its environmental impact and the effectiveness of the mitigation measures. The institutional measure describes specific institutional arrangements for implementing the mitigation and monitoring measures.²⁶⁴

An EMP therefore serves as a reference and guide to a developing company in the implementation of its project in order to ensure that minimal or no damage is done to the environment where such project is being implemented and that the project is implemented in accordance with the conditions for the grant of an environmental authorization or a financial support. It is submitted that since the Nigerian EIA Act does not provide for such a detailed EMP, it is easy for oil companies to obtain an environmental authorization and proceed to implement their proposed project without establishing any concrete plan with respect to the management of the environment in the course of implementing the project.

Finally, in Nigeria, an EIA is required to be conducted by a review panel.²⁶⁵ However, no reference is made to the qualification or expertise of the members of the panel. There is also no provision as to the expected code of conduct of members of the panel in the discharge of their responsibility. In other jurisdictions, South Africa for instance, an environmental assessment practitioner (EAP) is required to be an independent practitioner with expertise in conducting EIA including the knowledge of legislation relevant

²⁶⁴ Ibid.

²⁶⁵ Section 16, EIA Act, *supra* at note 94.

to the proposed project.²⁶⁶ The EAP is also required to perform his or her duty in an objective manner, comply with all applicable legislation, disclose to the applicant and competent authority material information in his or her possession that may influence any decision to be taken in respect of the application for authorization and ensure the objectivity of any report, plan or document to be prepared for submission to the competent authority.²⁶⁷

It is submitted that Nigeria can take guidance from this and entrench in the EIA Act provisions relating to the expertise of members of EIA review panel as well as a code of conduct to be binding on such members. Also, in order to enhance the corporate responsibility of companies operating in the Nigerian oil industry, these companies can emulate the standard of EIA as practised in other jurisdictions.

There has not been any litigated matter with respect to EIA in Nigeria. However, there are some other jurisdictions that have litigated on this matter. In the case of *Narok County Council and another v National Environment Management Authority (NEMA) and another*,²⁶⁸ the appellants filed an appeal against NEMA challenging its grant of a certificate of approval to a developer as contrary to the Kenyan EIA Regulations. The grounds upon which the appeal was filed include:

- i. that NEMA upon receipt of the EIA study report from the developer did not invite the public to make oral or written comments on the report;

²⁶⁶ Regulation 17, RSA EIA Regulations, supra at note 165.

²⁶⁷ Ibid.

²⁶⁸ (2006) eKLR; www.kenyalaw.org [accessed September 10, 2013].

- ii. that NEMA did not hold any public hearing on the project or seek the participation of the major stakeholders and affected persons;
- iii. that NEMA did not address itself to the issue of cumulative environmental impact that the project would have on the environmentally fragile eco-system of the affected area before the approval;
- iv. that NEMA ignored the advice of its technical team that visited the area and strongly recommended against any interference with the natural status of the area; and
- v. that the developer in the course of the EIA study did not seek the views of the persons who may be affected by the project.

The hearing tribunal set aside and quashed the decision of NEMA and ordered that the developer prepare a full EIA study report in accordance with the EIA regulations; and directed that no further development activity takes place at the project site or its environs until the order had been complied with. This case shows the significance attached to EIA, especially the importance of public participation and stakeholder engagement in the EIA process. So also is the necessity that an EIA must identify the possible impact of a proposed project on the environment, as well as the extent of such impact.

Also, in the England case of *R (Cooperative Group Ltd.) v Northumberland County Council*,²⁶⁹ a local planning authority adopted a screening opinion that an EIA was not required for a proposed development. The opinion was

²⁶⁹ (2010) EWHC, 373.

based on a letter from the developer which only described the possible environmental impacts of the proposed development in a general and superficial manner, and gave assurances that necessary information would be provided in the future. It was held that in order to adopt a screening opinion that an EIA is not required for a project, a local planning authority must have sufficient information about the project to make an informed judgment on whether the project is likely to impact significantly on the environment. Therefore, a request by developers for a screening opinion must be accompanied by detailed information with respect to the possible environmental effects of the proposed project, and any proposed mitigation measures.²⁷⁰ This case shows the significance of evaluating the possible impacts of a proposed project on the environment as well as the possible mitigation measures proposed by the proposed developer before deciding whether such a proposed project should be subjected to an EIA or not. This is very necessary because the essence of an EIA is to prevent, reduce, or where possible offset any negative impact an activity may have on the environment.

In the South African case of *Silvermine Valley Coalition v Sybrand Van Der Spuy Boerderye and Others*,²⁷¹ it was stated that ‘an EIA fits into a scheme which has been set up to ensure that official approval is granted before certain land can be put to specific uses, as defined with reference to various possible activities’. Thus, an EIA must be conducted in respect of any

²⁷⁰ Norton Rose Fulbright (2011): “Environmental Impact Assessment Case Law Update”; www.nortonrosefulbright.com/knowledge/publications/56447/environmental-impact-assessment-case-law-update-2011#pg_hdr [accessed September 10, 2013].

²⁷¹ 2002 (1) SA 478 (C).

activity for which an EIA is required before such activity is implemented. An EIA cannot be conducted after the activity for which it is conducted has already been implemented. This is because EIA is a preventive, and not a remedial mechanism for the protection of the environment. Thus, to conduct an EIA after the activity for which it is conducted has been implemented will defeat the purpose it is intended to fulfill.

Although these cases do not relate to activities in the oil industry, they however reveal the significance and necessity of complying with EIA rules and procedures in order for the EIA to fulfill its objective of protecting the environment.

4.3 ENVIRONMENTAL MANAGEMENT SYSTEMS IN NIGERIA

Oil and Gas development activities can be implemented safely with little adverse impact on the environment only through a strong corporate commitment to the protection of the environment. Such commitment systematically integrates environmental considerations into corporate decisions through the implementation of formal management systems.²⁷² The International Standards Organization (ISO) published the ISO 14000 series which consists of an evolving series of general standards that provides corporate managers with the structure for managing environmental impacts.²⁷³ Although this standard may be used in its basic form, it has been adapted and incorporated into national standards systems such as the

²⁷² E & P Forum and UNEP: "Environmental Management in Oil and Gas Exploration and Production: An Overview of Issues and Management Approaches" (1997), p 27; www.ogp.org.uk/pubs/254.pdf [accessed August 29, 2013].

²⁷³ Ibid.

EU 'EMAS Regulations'²⁷⁴, the South African 'SABS ISO 14000 series',²⁷⁵ the Nigerian 'NIS ISO 14001 Environmental Management System'.²⁷⁶ OGP has also published the Health, Safety and Environmental Management Systems (HSE-MS)²⁷⁷ which is in consonance with the requirements of the ISO 14000 series.²⁷⁸

The ISO 14001 is the most generic of the ISO 14000 series, and it provides the overall framework for environmental management systems (EMS).²⁷⁹ The ISO 14001 provides the elements of an EMS, and companies intending to develop an EMS must take cognizance of these elements and put them in place in their business operations. Don Sayre in his book "Inside ISO 14000: The Competitive Advantage of Environmental Management"²⁸⁰ enumerates the elements and principles of an EMS as contained in the ISO 14001 standard and guidelines. Thus, for lack of access to the ISO 14001 standard and guidelines, the said book is reviewed for the discussion on EMS.

The development and implementation of an EMS can be grouped into the following categories: environmental policy, planning, implementation and operation, checking and corrective actions, and management review.

4.3.1 ENVIRONMENTAL POLICY, OBJECTIVES AND TARGETS

²⁷⁴ EU: EC No. 1221/2009; www.ems.iema.net/stream.php/docs/downloads/EMAS%20111%20req.pdf [accessed September 2, 2013].

²⁷⁵ The South African Bureau of Standards; <https://www.sabs.co.za/Sectors-and-Services/Services/EMS/index.asp> [accessed September 2, 2013].

²⁷⁶ The Standards Organization of Nigeria; www.son.gov.ng/index.php/management-system-certification [accessed September 2, 2013].

²⁷⁷ E & P Forum: "Guidelines for the Development and Application of Health, Safety and Environmental Management Systems", supra at note 195.

²⁷⁸ E & P Forum and UNEP, supra @note 272, p 28.

²⁷⁹ (1995) Kuhre Lee: "ISO 14001 Certification: Environmental Management Systems" p 28

²⁸⁰ Delray Beach : St Lucie Press (1996).

An environmental policy is defined as ‘a statement by an organization of its intentions and principles for environmental performance’.²⁸¹

ISO 14001 requires a company which intends to develop an EMS to formulate an environmental policy which indicates its deeply held environmental values and beliefs, and which provides a framework for setting and reviewing corporate environmental objectives and targets. Such policies must however take into consideration requirements of environmental laws and regulations as well as information obtained about the impacts of the company’s activities on its operating environment. Based on the company’s environmental policy, environmental objectives and targets are expected to be established for the company.²⁸²

Such environmental policy, objectives and targets must be documented, implemented, maintained, and communicated to all employees of the company. It must also be available to the public.²⁸³ More importantly, corporate environmental policy, objectives and targets should be defined and supported by the senior management of the company.²⁸⁴ Company managers should ensure that their company’s environmental policy, objectives and targets are taken into consideration during company operations, and should support actions taken to protect the environment.²⁸⁵

4.3.2 PLANNING

²⁸¹ (1996) Don Sayre: “Inside ISO 14000: The Competitive Advantage of Environmental Management” p 76.

²⁸² Ibid, pp 156 & 162.

²⁸³ Ibid, p 78.

²⁸⁴ Ibid, p. 160.

²⁸⁵ E & P Forum and UNEP, supra at note 272, p 30.

Senior managers of corporations intending to develop an EMS are required to demonstrate strong leadership and commitment that translates into necessary resources required to develop, operate and maintain an EMS. Moreover, they are to demonstrate strong commitment toward the attainment of the company's environmental policies and objectives.²⁸⁶

Company managers in developing a corporate EMS should identify the environmental aspects and significant impacts of the operations and activities of their company on the environment.²⁸⁷ The identification of environmental aspects and impact should however continue even after the EMS might have been developed and all information obtained from the process should be regularly kept up to date.²⁸⁸ The scope of identification should encompass all phases of the company's activities from inception through to decommissioning.²⁸⁹

Company managers in developing a corporate EMS should also take cognizance of relevant legal and other requirements to which the company is subscribed and which are applicable to the company's environmental aspects.²⁹⁰ Such requirements may include national environmental legislations; national and international oil industry codes; regulatory guidelines; and international standards and practices.

4.3.3 IMPLEMENTATION AND OPERATION

²⁸⁶ Ibid.

²⁸⁷ Don Sayre, *supra* at note 281, p 85.

²⁸⁸ Ibid, pp 85 & 161.

²⁸⁹ E & P Forum and UNEP, *supra* at note 272, p 31.

²⁹⁰ Don Sayre, *supra* at note 281, p 162.

An EMS should establish programmes for achieving corporate environmental objectives and targets and provide for the maintenance of the programmes. This is significant to the successful implementation of an EMS as it describes how targets are to be achieved, how objectives are to be met, and generally how companies' environmental policies can be reflected in companies' operations and operating environments.²⁹¹ An EMS should also define roles, responsibilities and authorities necessary to implement the EMS; and also provide for the documentation and communication of such roles, responsibilities, and authorities.²⁹² Such persons designated with specific roles, responsibilities and authorities would be accountable and responsible for ensuring the EMS requirements are established, implemented and maintained.²⁹³ Such persons would also report on the performance of the EMS to senior management for possible review and as a basis for improvement of the EMS.²⁹⁴

Only persons who are competent on the basis of their education and training should be involved in corporate operations which can cause significant environmental impacts.²⁹⁵ Hence, an EMS should determine the level of experience, competence, and training necessary to ensure the capability of persons involved in the company's environmental functions.²⁹⁶ An EMS should also establish procedures to make employees aware of the importance of compliance, their roles and responsibilities in achieving

²⁹¹ Ibid, p 163.

²⁹² E & P Forum and UNEP, *supra* at note 272.

²⁹³ Don Sayre, *supra* at note 281, pp 163-164.

²⁹⁴ Ibid, p 164.

²⁹⁵ Ibid, p 165.

²⁹⁶ Ibid.

compliance with the company's environmental policy, procedures, and EMS as well as provide for the maintenance of such established procedures.²⁹⁷ Proper procedures should also be established to inform employees of the significant environmental impacts of their activities, the environmental benefits of improved personal performance, and the potential consequences of departure from specific operating procedures.²⁹⁸

An EMS should establish procedures for internal and external communications and provide for the maintenance of such established procedures. Internal and external stakeholders should be kept informed about corporate EMS. According to the 'Global Reporting Initiative' (GRI), such corporate environmental reporting should be done in a transparent manner. Thus, the GRI provides some principles that can help a company to identify what its environmental report should contain, and that ensures the quality of information contained in the report as well as its proper presentation by the company.²⁹⁹ A corporate environmental report should identify the company's stakeholders, and describe how the company has responded to the legitimate interests and expectations of the stakeholders.³⁰⁰ The report should contain detailed and accurate information on the company's environmental aspects and impact, and the performance of the company in managing its impact on the environment. The positive and negative aspects of the company's environmental

²⁹⁷ Ibid, p 164.

²⁹⁸ Ibid.

²⁹⁹ Global Reporting Initiative: "G4 Sustainability Reporting Guidelines", p 16; www.globalreporting.org/resource/library/GRIG4-Part1-Reporting-Principles-and-Standard-Disclosures.pdf [accessed September 9, 2013].

³⁰⁰ Ibid.

performance should be reflected to enable stakeholders assess fairly the company's environmental performance.³⁰¹ Companies should be consistent in giving environmental reports, and information contained in the report should be presented in a manner that the company's stakeholders are able to analyze changes in the company's performance over time.³⁰² Companies should present their environmental reports early enough for stakeholders to make informed decisions based on the content of the report, and information contained in the reports should be presented in a way that it is understandable and accessible to the stakeholders.³⁰³ Companies should disclose to their stakeholders information and processes used by the company to prepare the report in a manner that such processes can be subject to examination, and/or establishes the quality and materiality of the information contained in the report.³⁰⁴

Furthermore, an EMS should establish procedures for receiving, documenting, and responding to relevant communication from interested persons, and provide for the maintenance of such established procedures.³⁰⁵

The emphasis of any EMS should be on the prevention of avoidable detrimental environmental effects.³⁰⁶ In spite of companies' efforts, there is still the possibility of accidents and emergency situations. Effective preparation and response can however prevent or minimize environmental

³⁰¹ Ibid, pp 17-18.

³⁰² Ibid, p 18.

³⁰³ Ibid, pp 18-19.

³⁰⁴ Ibid, p 19.

³⁰⁵ Don Sayre, *supra* at note 281, p 165.

³⁰⁶ (1995) Hunt David, Johnson Catherine: "Environmental Management Systems: Principles and Practice" p 183.

impact.³⁰⁷ Hence, an EMS should provide for an emergency preparedness and response program. An effective emergency preparedness and response program should assess the potentials for accidents and emergencies, provide for the prevention of accidents and emergencies and their associated environmental impacts, and prescribe procedures for responding to accidents and emergencies. It should also provide for the mitigation of impacts associated with such incidents and the periodic testing of the emergency procedures.³⁰⁸

Companies should keep information regarding their EMS in documented form, either in paper or electronic form. The document should describe the core elements of the companies' EMS, the interaction of these elements, and the direction to related documents. This document should be maintained at all time by companies claiming to have an EMS.³⁰⁹ Furthermore, companies should establish and maintain procedures for controlling all documents relating to their EMS such as the documented EMS, document establishing roles, responsibilities and authorities Etc. This is to ensure that such documents can be located, are periodically reviewed and revised as necessary.³¹⁰ Companies should create and maintain documents in a manner sufficient to implement their EMS. Thus, the primary focus of

³⁰⁷ (2001) NSF International: "Environmental Management Systems: An Implementation Guide for Small and Medium-Sized Organizations" (2nd ed.) p 57; www.epa.gov/ems/EMSguide2nded.pdf [accessed August 30, 2013].

³⁰⁸ Ibid.

³⁰⁹ Don Sayre, *supra* at note 281, p 168.

³¹⁰ Ibid.

documentation should be on effective implementation of an EMS and on environmental performance.³¹¹

A company should demonstrate that it actually implements its EMS as designed through the records it keeps. Companies should establish and maintain procedures for the identification, maintenance, and disposition of environmental records such as its training records, records of audits and reviews.³¹² While records may be valuable internally, they may sometimes be necessary to provide evidence of EMS implementation to external stakeholders.³¹³ Hence, records are to be kept and maintained in such a way that they are readily retrievable and protected against damage, deterioration, or loss.³¹⁴

4.3.4 CHECKING AND CORRECTIVE ACTIONS

An EMS should provide for procedures for the company developing the EMS to monitor key characteristics of its activities that can significantly impact on the environment. The EMS should also provide for the procedures for measuring the company's performance against its objectives and targets, adjusting and maintaining monitoring equipment, and periodically evaluating compliance with relevant laws and regulations.³¹⁵ Such procedures for measuring the company's performance against its objectives and targets may include the establishment of measurable performance

³¹¹ Ibid, pp 166-167.

³¹² Ibid, p 169.

³¹³ NSF International, supra at note 307, p 69.

³¹⁴ Don Sayre, supra at note 281, p 170.

³¹⁵ NSF International, supra at note 307, p 60.

indicators.³¹⁶ Monitoring and measurement helps companies to manage their EMS better. It enables companies to evaluate their environmental performance, analyze the causes to any challenges encountered in implementing the EMS, assess compliance with legal requirements, identify areas requiring corrective action, improve environmental performance, and increase the efficiency of the EMS.³¹⁷

An EMS should establish procedures and define responsibilities and authority for handling and investigating company activities and operations that do not conform to the company's EMS. An EMS should also provide for the maintenance of such established procedures.³¹⁸ The procedures should take into account the mitigation of environmental impacts caused by non-conformance.³¹⁹ An EMS should also establish procedures for initiating corrective and preventive actions, and provide for the maintenance of such procedures.³²⁰ Changes resulting from such corrective and preventive actions should be recorded in the documented EMS.³²¹

Upon the establishment of an EMS by a company, it becomes necessary to verify its implementation. Periodic corporate environmental audits will help determine whether all the company's EMS requirements are being fulfilled in the specified manner.³²² For environmental audits to be effective, the company's EMS should provide for audit procedures and protocols; and determine the audit frequency, the selection and training of auditors, and

³¹⁶ Don Sayre, *supra* at note 281, p 100.

³¹⁷ NSF International, *supra* at note 307.

³¹⁸ Don Sayre, *supra* at note 281, p 168.

³¹⁹ *Ibid.*

³²⁰ *Ibid.*

³²¹ *Ibid.*

³²² NSF International, *supra* at note 307, p 71.

the maintenance of audit records.³²³ Environmental audit is very significant to the effectiveness of an EMS. Any deficiency or non-conformance identified by an audit procedure can be corrected or prevented as appropriate through the established corrective and preventive actions. An environmental audit also serves as a basis for an evaluation of the EMS and reporting on company's environmental performance.³²⁴

4.3.5 MANAGEMENT REVIEW

Company managers should review the EMS of their companies at determined intervals to ensure the EMS continuing stability, adequacy, and effectiveness.³²⁵ Such reviews are to address the need for changes to the elements of the EMS based on company's audit results, changing circumstances, and the company's commitment to continual improvement of its EMS.³²⁶ The reviews are to be documented, identifying any observations raised, recommendations made and conclusions reached.³²⁷

In Nigeria, the only legal framework that recognizes the system of environmental management as internationally prescribed is the 'Petroleum Industry Bill'.³²⁸ According to the Bill, every licensee engaged in petroleum exploration and production must submit an environmental management plan to the relevant authority for approval.³²⁹ Such environmental management plan is required to contain the environmental policy, objectives

³²³ Ibid.

³²⁴ Ibid.

³²⁵ Don Sayre, *supra* at note 281, p 172.

³²⁶ Ibid.

³²⁷ Ibid.

³²⁸ Nigeria: The Petroleum Industry Bill (2012), *supra* at note 131.

³²⁹ Ibid, Section 200(1).

and targets of the licensee, and the licensee's commitment to comply with relevant laws, regulations, guidelines, and standards.³³⁰ The plan is required to establish initial baseline information and a program for collecting further baseline information in respect of the affected environment, in order to determine appropriate protection and remedial measures in line with the licensee's environmental management objectives.³³¹ The plan is required to assess and evaluate the impact of the licensee's proposed activities on the environment, develop an environmental awareness plan which describes the manner in which the licensee intends to inform its employees of any environmental risks which may result from their activities and the manner in which the risks are to be dealt with to avoid any negative environmental impact.³³² The plan is also required to describe the manner in which the licensee intends to modify, remedy, control, or stop any action, activity, or process which negatively impacts the environment. Furthermore, the plan is required to specify how the licensee will contain, or remedy the cause of such negative environmental impact.³³³

This provision is however not legally binding on oil companies in Nigeria because the Petroleum Industry Bill is yet to be passed into law by the Nigerian legislature.

The Standards Organization of Nigeria (SON) in line with international trends have adopted and incorporated into the Nigerian industrial sector

³³⁰ Ibid, Section 200(2).

³³¹ Ibid, Section 200(3).

³³² Ibid.

³³³ Ibid.

ISO 14001. SON also offers EMS certification to companies in Nigeria.³³⁴ SON is vested with the authority for standards elaboration, specifications, and quality assurance system of commodities and processes in the Nigerian industrial sector.³³⁵ The Standards Directorate of SON which is responsible for developing the 'Nigerian Industrial Standards' (NIS) has therefore developed the 'NIS ISO 14001 Environmental Management System' in consonance with the ISO 14001.³³⁶ However, based on the information available on the website of SON, it has certified only one oil company in Nigeria with an EMS.³³⁷ It therefore either means only one oil company implements a system of environmental management in Nigeria, or the other oil companies do not have their EMS certified by SON. However, a search of the website of most of the oil companies in Nigeria did not reveal any information with regard to the EMS of the companies. It may therefore be concluded that the system of environmental management is not taken seriously in the Nigerian oil industry.

Although there have been no reported cases on EMS, empirical studies on the benefits and performance of EMS have been carried out. One of such studies was conducted in the United States by the University of North Carolina (UNC) and the Environmental Law Institute (ELI).³³⁸ This study

³³⁴ Nigeria: Standards Organization of Nigeria; www.son.gov.ng/index.php/management-system-certification [accessed September 3, 2013].

³³⁵ Standards Organization of Nigeria; www.son.gov.ng/index.php/about-us/who-we-are [accessed September 3, 2013].

³³⁶ Standards Organization of Nigeria; www.son.gov.ng/index.php/son-services/standards [accessed September 3, 2013].

³³⁷ Standards Organization of Nigeria; www.son.gov.ng/images/pdf/EMSCERTIFIEDCOMPANIES2.pdf [accessed September 3, 2013].

³³⁸ Commission for Environmental Cooperation (2005): "Successful Practices of Environmental Management Systems in Small and Medium-Size Enterprises: A North American Perspective", p 9; www.cec.org/Storage/59/5200_EMS-Report_en.pdf [accessed September 10, 2013].

gave rise to the 'National Database on Environmental Management Systems' (NDEMS).³³⁹ The NDEMS study examined corporate performance data at eighty-three (83) facilities over a period of five years. It was discovered that eighty-six per cent (86%) of these facilities reported benefits associated with their adoption of a formal EMS.³⁴⁰ Improvement in management efficiency was the most reported benefit of an EMS. Improvement in the operational efficiency of the facilities such as reductions in corporate inputs, and in corporate waste generation and disposal was also reported. The third benefit reported involves the reduction in corporate liability of the facilities such as reduction in insurance costs, and environmental liability as well as improved relationships with regulators including improved compliance and reduced violation fines.³⁴¹ Some of the NDEMS study facilities also reported information on quantified benefits associated with their adoption of a formal EMS. The average benefit for the facilities reporting such quantified benefits was \$90,320 (ninety-thousand, three hundred and twenty dollars).³⁴² One of the facilities reported an increase in revenue which it attributes to its implementation of an EMS.³⁴³

Corporate environmental management systems can therefore be said to contribute positively to corporate environmental responsibility as well as economic performance, and corporate sustainability in the long-run.

4.4 ENFORCEMENT OF EIA AND EMS

³³⁹ NDEMS represents the report of the research study by UNC and ELI of companies that are implementing EMS.

³⁴⁰ NDEMS (2003): "Environmental Management Systems: Do they Improve Performance?" p 13; www.epa.gov/environmentalinnovation/ems/ems_execsum_dotheywork.pdf [accessed September 10, 2013].

³⁴¹ Ibid, p 14.

³⁴² Ibid.

³⁴³ Ibid.

According to the Rio Declaration, environmental issues are best handled with the participation of all stakeholders, each stakeholder having access to information concerning the environment and the opportunity to participate in decision-making processes and an effective access to judicial and administrative proceedings.³⁴⁴

4.4.1 ACCESS TO INFORMATION

Relevant systems to ensure an adequate flow of information about proposed and existing activities that may significantly affect the environment should be established by designated competent authorities. Such relevant systems may require the regular reporting of such information to the competent authority by companies whose activities or operations significantly impact the environment. The companies could also be obliged to report regularly on the environmental impacts of their activities to the public.³⁴⁵

The competent authorities should regularly collect and update relevant environmental information such as information on corporate environmental performance and compliance with EIA and corporate EMS by operators of activities that may potentially affect the environment.³⁴⁶ Any person should have affordable, effective, and timely access to the environmental

³⁴⁴ UN (1992) "Report of the United Nations Conference on Environment and Development", Principle 10; www.un.org/documents/qa/conf151/aconf15126-1annex1.htm [accessed August 30, 2013].

³⁴⁵ UNEP: "Commentary to the Guidelines for the Development of National Legislation on Access to Information, Public Participation, and Access to Justice in Environmental Matters", Commentary to Guideline 4; www.unep.org/civil-society/Portals/24105/documents/Guidelines/Commentary-to-the-guidelines-for-the-development-of-national-legislation.pdf [accessed August 30, 2013].

³⁴⁶ UNEP (2010) "Guidelines for the Development of National Legislation on Access to Information, Public Participation, and Access to Justice in Environmental Matters", Guideline 4; www.unep.org/civil-society/Portals/24105/documents/Guidelines/GUIDELINES TO ACCESS TO ENV INFO 2.pdf [accessed August 30, 2013].

information held by the competent authority or reported by companies upon request by such a person without having to prove a legal or other interest.³⁴⁷

This will guarantee public awareness of the environmental activities of oil companies and the impact of such activities on the environment. It will also afford the public an opportunity to know whether oil companies are actually implementing their EMS and complying with EIA laws and regulations. It also affords the public an opportunity to know whether any decisions reached with the oil companies at any public consultation forum was actually taken into account by the companies in the course of their operations.

This can enhance enforcement of corporate environmental responsibilities because the public will be aware of the state of environmental compliance and performance of oil companies, and the public can through appropriate media ensure that such compliance and performance meets up with the standard of environmental responsibility required of oil companies. In Nigeria however, there is no framework to ensure that the public gets access to information in environmental matters. None of the environmental statutes made detailed provisions in this regard. In an attempt to go through the websites of most of the oil companies operating in Nigeria, none of the websites contains environmental reports in respect of the activities of the companies.

4.4.2 PUBLIC PARTICIPATION

³⁴⁷ Guideline 1, UNEP, *ibid.*

Companies should be obliged to make available opportunities for the early and effective participation by the public in corporate decision-making relating to the environment. Stakeholders should be informed of these opportunities at an early stage of the decision-making process.³⁴⁸ Public participation should be sought in a transparent and consultative manner and stakeholders should be given adequate opportunity to express their views.³⁴⁹ Adequate opportunity may include taking cognizance of the literacy level of stakeholders, holding meetings in close proximity to where the majority of the stakeholders reside etc.³⁵⁰

All environmental information relevant for decision-making should be made available to the stakeholders in an objective, understandable, timely, and effective manner.³⁵¹ Information could be made available through websites, notices, environmental statements and reports, or directly to stakeholders who have requested or have been identified to need direct communication. The procedure should include reasonable time frames permitting sufficient time for getting the public informed, and for stakeholders to seek access to relevant information, prepare and participate effectively.³⁵²

In the course of decision-making relating to the environment, companies should be obliged to take account of comments and opinions of stakeholders and any decision arrived at to be made public.³⁵³ Environmental authorities should consider appropriate ways of ensuring public input into the

³⁴⁸ Guideline 8, *ibid.*

³⁴⁹ Guideline 9, *ibid.*

³⁵⁰ Commentary to Guideline 9, UNEP, *supra*, at note 345.

³⁵¹ Guideline 10, UNEP, *supra*, at note 346.

³⁵² Commentary to Guideline 8, UNEP, *supra*, at note 345.

³⁵³ Guideline 11, UNEP, *supra*, at note 346.

preparation of companies' policies, plans, and programs relating to the environment.³⁵⁴ Companies should partner with environmental authorities to provide means for capacity-building such as environmental education and awareness, to promote public participation in decision-making relating to the environment.³⁵⁵

Public participation can enhance enforcement of EIA and EMS because if the public is involved in the decision-making processes relating to the environment, they will be encouraged to follow-up such decisions reached to ensure that they are effectively implemented. As noted earlier in this chapter, only the EIA Act made a fair provision with respect to public participation, all other legal and regulatory frameworks are silent on this imperative.

4.4.3 ACCESS TO JUSTICE

Any person who considers that his or her request for environmental information has been unreasonably refused, inadequately answered or ignored, or not handled in accordance with applicable laws should have an opportunity to challenge such decision, act, or omission before a court of law or other independent and impartial body.³⁵⁶ Stakeholders should be entitled to an opportunity to challenge the substantive and procedural legality of any decision, act, or omission relating to public participation in

³⁵⁴ Guideline 13, *ibid.*

³⁵⁵ Guideline 14, *ibid.*

³⁵⁶ Guideline 15, *ibid.*

decision-making in environmental matters before a court of law, or other independent and impartial body.³⁵⁷

Stakeholders should be given adequate opportunity to challenge any decision, act, or omission by companies that affect the environment or violates the substantive or procedural legal norms relating to the environment, before a court of law, or other independent and impartial body.³⁵⁸ Decisions taken by a court of law, other independent and impartial body in relation to environmental matters should be enforced promptly and effectively.³⁵⁹ Such decisions should also be made publicly available.³⁶⁰

In Nigeria, effective access to justice may however be hindered due to some challenges. Firstly, statutory procedural prerequisites have to be complied with. Thus, in ***Shell Petroleum Development Company (Nig.) Ltd. v. Abel Isaiah***,³⁶¹ the Supreme Court had to decide on the jurisdiction of a state High Court to hear an environmental matter and it was held that only the Federal High Court can decide on such a matter.³⁶² With the limited number of Federal High Courts in the country, it becomes very difficult for litigants to get easy and quick access to justice. Meanwhile in the case of ***Jonah Gbemre v SPDC Ltd. and others***,³⁶³ the court granted leave to the applicant to institute proceedings in a representative capacity for himself and each member of a community; and apply for an order to enforce their

³⁵⁷ Guideline 16, *ibid.*

³⁵⁸ Guideline 17, *ibid.*

³⁵⁹ Guideline 22, *ibid.*

³⁶⁰ Guideline 24, *ibid.*

³⁶¹ (2001) 5 SC (pt. 11), p 1.

³⁶² (2009) Energy and Environmental Law and Policy Series: "The Role of the Judiciary in Environmental Governance: Comparative Perspectives" Louis J. Kotze and Alexander R. Paterson (eds.), p 540.

³⁶³ (2005) Suit No. FHC/13/CS/53/05.

fundamental human right to life and dignity as provided for by the constitution. The court held that those constitutionally guaranteed rights include the right to a clean, pollution-free, and healthy environment.³⁶⁴ If it is agreed therefore that environmental pollution and degradation constitute a breach of a fundamental human right, one would expect that justice in such a situation would be easy and fast.

Secondly, the burden of proof in civil matters in Nigeria generally rests on the plaintiff, and it is based on a balance of probabilities. It is opined that this standard of proof in environmental matters might deprive many plaintiffs from getting justice. Thirdly is the issue of locus standi. In ***Shell Petroleum Development Company (Nig.) Ltd. v Chief Otoko and others***,³⁶⁵ the court held that it was essential that a representative in a representative action have the same interest and grievance as those of the persons he or she is representing.³⁶⁶ This might not constitute a problem to a person whose personal or proprietary interests have been affected by environmental pollution but it will be problematic for non-governmental and such other organizations who act as environmental defenders.³⁶⁷ Because of the lack of direct interest, they may lack the requisite standing to institute environmental proceedings in a representative capacity.³⁶⁸

4.4.4 ECONOMIC INSTRUMENTS

³⁶⁴ Kotze and Paterson, supra at note 362, p 543.

³⁶⁵ (1990) 6 NWLR (pt. 159), pp 693 at 695.

³⁶⁶ Kotze and Paterson, supra at note 362, p 541.

³⁶⁷ Ibid, p 542.

³⁶⁸ Ibid.

Economic instruments consist of ‘government policies for environmental protection that make use of fiscal incentives and deterrents, as well as market measures, rather than regulating specific outcomes’.³⁶⁹ Economic instruments aim to influence decision-making in a way that alternatives that are more environmentally desirable are chosen by operators, which would not have been chosen in the absence of such instrument.³⁷⁰ For instance, charges and taxes may be levied to make polluters pay the costs of any environmental damage arising from the pollution. This ensures that operators take account of the costs of environmental damage in their decision-making processes.³⁷¹ Government may give tax concessions to companies operating in an environmentally friendly manner so as to provide an incentive for environmentally friendly operations. Persons seeking environmental authorization may be required to give performance bonds which will serve as a guarantee that the activity for which the authorization is sought would be carried out in an environmentally friendly manner. Such bond would be refunded after the operation has been completed, if the operation complies with the terms of the bond. Fees may also be charged for non-compliance with any environmental regulation or standard etc.³⁷²

4.5 CONCLUSION

In conclusion, in order for the Nigerian oil industry to be sustainable, and for the oil companies to continue operating over a long period of time, it is

³⁶⁹ <http://www.iisd.org/didigest/glossary.htm>.

³⁷⁰ (1997) Industry Commission: “Role of Economic Instruments in Managing the Environment” Staff Research Paper, Industry Commission, Melbourne, p 10;
http://www.pc.gov.au/data/assets/pdf_file/0006/8889/ecoinstr.pdf [accessed September 3, 2013].

³⁷¹ Ibid, p 11.

³⁷² Ibid, pp 17-18.

imperative that the oil companies are environmentally responsible. They must take all measures necessary to ensure that they comply with international EIA standards before embarking on any exploration or production activity. Each of these companies must also ensure that it develops and implements an EMS that measures up to international standards.

University of Cape Town

CHAPTER FIVE: RECOMMENDATIONS AND CONCLUSION

5.1 RECOMMENDATIONS

Chapter two of this research identified the legal and regulatory framework for corporate environmental responsibility in Nigeria in relation to the oil industry. Chapter three evaluated some internationally accepted standards of corporate environmental responsibility. Chapter four discussed the implementation and enforcement of these international standards, and evaluated the provisions on corporate environmental responsibility in the Nigerian oil industry within the international framework. On the basis of the findings in chapter four, it is expedient that some recommendations be made towards corporate environmental responsibility in the Nigerian oil industry, and consequently its sustainability.

Firstly, the Department of Petroleum Resources (DPR), as identified in chapter two of this research, is the major agency that regulates and controls the activities of oil companies in relation to the environment and generally. It is this agency that administers the Environmental Impact Assessment Act in relation to the oil industry. It is responsible for the grant of licenses and permits in relation to operations and activities in the oil industry. However, DPR is one of the agencies of the Federal Ministry of Petroleum Resources (MPR). MPR has as its vision the promotion of 'an internationally competitive oil and gas sector that contributes maximally to the growth and

development of the Nigerian economy'.³⁷³ The mandate of the ministry includes inter alia, the development of the Nigerian oil industry.³⁷⁴ The Nigerian National Petroleum Corporation (NNPC) is also an agency of the ministry that undertakes the commercial ventures in the petroleum industry on behalf of the Federal Government.³⁷⁵ It is therefore obvious that DPR has a conflict of interest with respect to the discharge of its duties. Being an agent of a ministry responsible for the promotion of the oil industry, it becomes difficult for it to effectively restrict, limit, or otherwise control the activities of operators in the industry. Moreover, how does DPR effectively regulate and control the activities of NNPC which is also an operator in the industry when they both act for the same ministry?

It is therefore recommended that DPR should be left with the management of the oil companies, issuance of oil permits and licenses, and incidental matters. The regulation and control of the activities in the oil industry with respect to the environment should be left to the Federal Ministry of Environment (FME) which is responsible for ensuring that environmental matters are adequately mainstreamed into all developmental activities.³⁷⁶ The FME should create a special department to be responsible for the monitoring and control of activities of oil companies, given the magnitude of oil exploration activities. The department should prescribe regulations which conform to the national policy on the environment, Nigerian environmental

³⁷³ Nigeria: Federal Ministry of Petroleum Resources; <http://www.nigeria.gov.ng/2012-10-29-11-06-51/executive-branch/104-federal-ministry-of-petroleum-resources/184-ministry-of-petroleum-resources?showall=1&limitstart=> [accessed August 31, 2013].

³⁷⁴ Ibid.

³⁷⁵ Ibid.

³⁷⁶ Nigeria: Federal Ministry of Environment; <http://www.nigeria.gov.ng/2012-10-29-11-06-51/executive-branch/94-federal-ministry-of-environment/182-federal-ministry-of-environment> [accessed August 31, 2013].

laws, and international guidelines and standards. The regulations will be the reference point for oil companies in the course of their activities. The regulations should mandate all oil companies in Nigeria to develop and implement a system of environmental management and such EMS should be certified by the Standards Organization of Nigeria. The department should have an environmental monitoring and auditing unit which will be charged with the regular monitoring and auditing of the activities of oil companies and their operating environment, to determine whether they conform to their corporate EMS, and the department's regulations. The proposed new department in partnership with the Standards Organization of Nigeria should develop standard indicators for oil companies to evaluate and measure their environmental performance and sustainability.

The new department should have its office situated in the Niger Delta Region of Nigeria which is where the oil companies carry out their exploration and production activities. Oil companies should be required to report within specified periods to the proposed new department on their environmental performance based on their EMS, or any environmental management plan resulting from an EIA of a proposed activity. Oil companies should also be required to report within specified time frames to the public on their environmental performance. Oil companies can report to the public through their websites, but this alone will not be sufficient because most of the areas affected by the activities of oil companies are rural communities. Therefore, an established forum where the companies meet from time to time with their stakeholders for the purpose of reporting on their corporate performance is

essential. Other reasonable avenues for reporting maybe developed to meet peculiar situations.

Relieving the DPR of responsibility for regulating the environmental activities of oil companies and transferring such responsibility to the FME will create a sort of check and balance. In other words, as the DPR is managing the oil industry, issuing permits and licenses, the FME can effectively monitor the activities for which the licenses and permits are issued to ensure that they conform to environmental standards. The new department of the FME proposed should be in charge of the EIA of developmental activities of oil companies. This department should be responsible for accrediting a proposed activity after it has been subjected to an EIA. Such accreditation by the proposed new department should be one of the requirements of the DPR for the grant or renewal of any oil license or permit.

Secondly, as identified in chapter four of this research, the Environmental Impact Assessment Act 1992 should be amended to include detailed provisions on the public participation process, the environmental management plan, and the code of conduct and qualification of members of the EIA review panel. The proposed amendment should designate the competent authority in an EIA process as the FME.

Thirdly, oil companies are required to be registered with the Corporate Affairs Commission (CAC) before they can carry out any of their operations in Nigeria. CAC requires certain documents to be submitted in an

application process including a memorandum and articles of association.³⁷⁷

It is recommended that a statement detailing the proposed company's environmental management system, duly certified by the Standards Organization of Nigeria should form part of the incorporation documents for oil companies. The Nigerian Stock Exchange should also include a duly certified statement of EMS in its listing requirements for oil companies.

Furthermore, the regulations of the proposed new department of the FME should contain detailed provisions on access to information and public participation in all environmental processes of oil companies. Such provisions should conform to UNEP's guidelines for the development of national legislation on access to information, public participation, and access to justice in environmental matters identified in chapter four. The regulations of the proposed new department of the FME should also provide a framework for corporate environmental reporting which aligns with international best practices. The framework should take into account the reporting criteria and principles enunciated in the Global Reporting Initiative's G4 Guidelines as identified in chapter three and four.

Moreover, access to justice is very important for the enforcement of environmental protection and management. Thus, judicial remedy should be made accessible to stakeholders in environmental matters. In order to ensure access to justice as expounded in the 'Rio Declaration', there is a need to adopt broad and inclusive interpretations of locus standi; create

³⁷⁷ Nigeria: Companies and Allied Matters Act, Section 35; <http://www.nigeria-law.org/CompaniesAndAlliedMattersActPartI-V.htm#Incorporation%20of%20companies%20and%20incidental%20matters> [accessed August 31, 2013].

impartial administrative, judicial, and alternative media for dispute resolution.³⁷⁸ It is also important to provide affordable and timely legal services, promote active education of the public with respect to environmental rights and duties and entrench relevant statutory provisions in national laws which promote active public participation.³⁷⁹ This calls for strong civil society partnerships with relevant government agencies.

The argument that state High Courts cannot decide on environmental matters is based on the fact that environmental matters are regulated by federal law and thus, only a Federal High Court has the jurisdiction to decide on it. It is therefore recommended that a separate judicial body such as a 'Federal Environmental Tribunal' be created by the federal government to handle cases of environmental disputes generally. This will ensure the effective and speedy adjudication of environmental matters.

Secondly, with respect to the burden and standard of proof, it is recommended that an exception should be made in environmental cases generally. In environmental cases, the criminal standard of proof which is proof beyond reasonable doubt should apply, and the onus of proof should be on the defendant. A defendant-company in such a case should be made to prove beyond reasonable doubt that it complied with every relevant environmental standard in relation to the activity for which it is charged to court. This will make the liability in environmental matters stricter, causing oil companies in the course of their operations to be more proactive in

³⁷⁸ Kotze and Paterson, *supra* at note 362, p 538.

³⁷⁹ *Ibid.*

exercising due diligence and reasonable care with respect to the environment.

In South Africa, the South African constitution provides a more liberal approach to locus standi. It provides that anyone acting in their own self-interest, on behalf of another person who cannot act in their own name, acting as a member of or in the interest of a group or class of persons; acting in the public interest, and an association acting in the interest of its members, has the right to approach a competent court alleging that a right has been infringed or threatened.³⁸⁰ This non-exhaustive list opens up opportunity for public interest litigation.³⁸¹ It is recommended that whatever procedural rule the proposed 'Federal Environmental Tribunal' adopts, it must clarify the scope of the locus standi principle.

Also, the proposed new department of the FME in partnership with non-governmental organizations should provide for the regular education and orientation of the public on corporate environmental responsibilities towards the society in which they operate. This will enable the public to be informed about their environmental rights and the duties owed to them by the companies operating in their environment. Hence, they can seek the enforcement of those rights, and the implementation of those duties. The support of civil society organizations and public interest law groups is also essential in this regard.

³⁸⁰ Constitution of the Republic of South Africa (1996), Section 38.

³⁸¹ Ibid, p 571.

In order to enforce corporate environmental responsibility in the oil industry, it is recommended that the federal government adopt, in consonance with other enforcement mechanisms, the use of economic instruments such as pollution charges and taxes, tax concessions, performance bonds etc. The federal government through the proposed new department of the FME may also publicly recognize the efforts of those companies that are environmentally responsible by giving such companies national awards. There may also be an award for the most environmentally responsible oil company which would be given annually. Stakeholders generally would be invited to vote for the oil company which in their opinion is the most environmentally responsible. Hopefully, this will incentivise other companies to be more environmentally responsible.

Lastly, oil companies in other jurisdictions have established national associations such as the South African Petroleum Industry Association (SAPIA), Australian Petroleum Production and Exploration Association (APPEA), United Kingdom Offshore Operators Association (UKOOA), and these associations through codes of conduct have been able to regulate the activities of their members. It is recommended that oil companies in Nigeria establish a national association, and enact their own code of conduct and acceptable practice which aligns with national environmental laws, and internationally accepted good oil field practice. This association can also organize conferences for its members, produce relevant publications, and continually enlighten its members on the imperatives of corporate sustainability. Moreover, the association as a professional body can pull

resources together dedicated to the continual improvement of the industry's environment.

5.2 CONCLUSION

In the introductory part of this research, the term 'corporate sustainability' was defined. From the various definitions given, it is inferred that corporate sustainability refers to the sustainable development of a company's activities. Environmental sustainability is a very significant aspect of sustainable development particularly in relation to the activities of oil companies. It can therefore never be over-emphasized. If a company must continue to operate over the long term, the environment in which it operates must first and foremost be sustainable. Corporate environmental responsibility is one mechanism to ensure that the environment of business, particularly in the oil industry, is sustainable.

The environment of business in the Nigerian oil industry cannot be said to be sustainable. Although, Nigeria through the legal and regulatory framework has recognized some of the internationally accepted standards for corporate environmental responsibility, the framework is still far behind other jurisdictions. Besides this, the effective implementation and enforcement of the framework is the most important challenge confronting the Nigerian oil industry.

In conclusion, it is important that a corporate environmental responsibility framework that conforms to internationally acceptable standards and guidelines as discussed, including recommendations made in this chapter,

be implemented by relevant authorities to promote the sustainability of oil companies in Nigeria.

BIBLIOGRAPHY

1. CASES

Kenya

Narok County Council and Another v National Environmental Management Authority and Another (2006) eKLR.

England

R (Cooperative Group Ltd.) v Northumberland County Council (2010) EWHC, 373.

South Africa

Silvermine Valley Coalition v Sybrand Van Der Spuy Boerderye and Others 2002 (1) SA 478 (C).

2. STATUTES

South Africa

- Constitution of the Republic of South Africa, 1996.
- Environmental Impact Assessment Regulations, 2010.

Nigeria

- Companies and Allied Matters Act, 2004.
- Constitution of the Federal Republic of Nigeria, 1999.
- Environmental Impact Assessment Act, 1992.

- Federal Environmental Protection Agency Act,
- National Oil Spill Detection Response Agency Act,
- Niger Delta Development Commission (Establishment) Act, 2000.
- Oil Pipelines Act, 1956.
- Petroleum (Drilling and Production) Regulations, 1969.
- Petroleum Act, 1969.
- Petroleum Industry Bill, 2012.

3. OFFICIAL PUBLICATIONS

- Amnesty International Publications Nigeria, 'Petroleum Pollution and Poverty in the Niger Delta', 2009.
- Chartered Secretaries Southern Africa, 'Corporate Governance in Southern Africa', 2012.
- Institute of Directors in Southern Africa, 'King Report and Code on Corporate Governance for South Africa', 2009.
- ISO 19011, ISO Environmental Management: The ISO 14000 Family of International Standards, 2009.
- Organization of Petroleum Exporting Countries, 'Annual Statistical Bulletin', 2012.
- South African Bureau of Standards Environmental Management Services: SABS ISO 14000 Series.

- Southern African Development Community, Environmental Legislation Handbook, 2012.
- The Department of Petroleum Resources, Nigeria, 'Environmental Guidelines and Standards for the Petroleum Industry in Nigeria', 2002.
- The Department of Petroleum Resources, Nigeria, 'Guidelines and Procedures for the Design, Construction, Operation and Maintenance of Oil and Gas Pipeline Systems in Nigeria', 2007.
- The Federal Ministry of Environment, Nigeria, 'Draft Revised National Policy on the Environment', 1998.
- United Nations Development Program Nigeria, 'Niger Delta Human Development Report', 2006.

4. INTERNATIONAL INSTRUMENTS

- Australian Petroleum Production and Exploration Association, Code of Environmental Practice, 2008.
- European Union, Eco-Management and Audit Scheme Regulations, 2009.
- European Union, Environmental Impact Assessment Directive, 1997.
- Global Reporting Initiative, G4 Sustainability Reporting Guidelines, 2013.
- International Association of Oil and Gas Producers E & P Forum, 'Guidelines for the Development and Application of Health, Safety and Environmental Management Systems', 1994.

- International Chamber of Commerce, 'Business Charter for Sustainable Development', 2000.
- International Oil and Gas Producers Association, 'Principles for Impact Assessment: The Environmental and Social Dimension', 2002.
- Organization for Economic Co-operation and Development, 'Guidelines for Multinational Enterprises', 2011.
- Report of the World Commission on Environment and Development, 'Our Common Future', 1987.
- The United Nations Global Compact, 2000.
- The World Bank, 'Operational Policies 4.01-Environmental Assessment', 2013.
- United Nations Environment Programme, 'Commentary to the Guidelines for the Development of National Legislation on Access to Information, Public Participation, and Access to Justice in Environmental Matters', 2010.
- United Nations Environment Programme, 'Guidelines for the Development of National Legislation on Access to Information, Public Participation, and Access to Justice in Environmental Matters', 2010.
- United Nations Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, Rio de Janeiro, 1992.

5. BOOKS AND JOURNALS

‘Minding Our Business: The Role of Corporate Accountability in Sustainable Development’ A non-governmental organization report to the United Nations Commission on Sustainable Development, 1997.

Wawryk, Alexandra ‘International Environmental Standards in the Oil Industry: Improving the Operations of Transnational Oil Companies in Emerging Economies’ Centre for Energy, Petroleum and Mineral Law and Policy, University of Dundee, 2002.

Pramanik, Alok, Shil, Nikhil and Das, Bhagaban ‘Corporate Environmental Reporting: An Emerging Issue in the Corporate World’ International Journal of Business and Management, Vol. 3, No. 12, 2008.

Savitz, Andrew and Weber, Karl ‘The Triple Bottom Line: How Today’s Best-Run Companies Are Achieving Economic, Social and Environmental Success- And How You Can Too’, San Francisco, CA: Jossey-Bass (2006).

Anyanwu Chukwudi, ‘The Oil Industry and the Nigerian Environment’ a paper delivered at the 32nd Annual Meeting of the International Association for Impact Assessment, Centro de Congresso da Alfandega, Porto-Portugal, 2012.

Helg, Asa ‘Corporate Social Responsibility from a Nigerian Perspective’, Journal of Management and Organization, 2007.

Ugochukwu, Collins and Ertel, Jrgen 'Negative Impacts of Oil Exploration on Biodiversity Management In the Niger Delta Area of Nigeria' *Journal of Impact Assessment and Project Appraisal*, Vol. 26, No. 2, 2008.

Commission for Environmental Cooperation, 'Successful Practices of Environmental Management Systems in Small and Medium-Size Enterprises: A North American Perspective', 2005.

Dunphy, Dexter 'Sustainability: The Corporate Challenge of the 21st Century', St. Leonards, N.S.W.: London: Allen & Unwin (2000).

Sayre, Don 'Inside ISO 14000: The Competitive Advantage of Environmental Management', Delray Beach: St Lucie Press, 1996.

Morgera, Elisa 'Corporate Accountability in International Environmental Law', Oxford University Press, Oxford, 2009.

Energy and Environmental Law and Policy Series, 'The Role of the Judiciary in Environmental Governance: Comparative Perspectives', Kotze, Louis and Paterson, Alexander (eds.), Kluwer Law International, Netherlands, 2009.

Eregha P. B. and Irughe I. R., 'Oil Induced Environmental Degradation in the Nigeria's Niger-Delta: The Multiplier Effects' *Journal of Sustainable Development in Africa*, Vol. 11, No. 4, 2009.

Perrini, Francesco and Tencati, Antonio 'Sustainability and Stakeholder Management: The Need for New Corporate Performance Evaluation and Reporting Systems' *Journal of Business Strategy and the Environment*, Vol. 15, 2006.

Hunt, David and Johnson, Catherine, 'Environmental Management Systems: Principles and Practice', McGraw-Hill, London, 1995.

International Association of Oil and Gas Producers E & P Forum and UNEP, 'Environmental Management in Oil and Gas Exploration and Production: An Overview of Issues and Management Approaches', 1997.

International Association of Oil and Gas Producers, 'Principles for Impact Assessment: The Environmental and Social Dimension', 1997.

Montiel, Ivan 'Corporate Social Responsibility and Corporate Sustainability: Separate Pasts, Common Futures' Journal of Organization and Environment, Vol. 21, No. 3, 2008.

Przychodzen, Justyna and Przychodzen, Wojciech 'Corporate Sustainability and Shareholder Wealth' Journal of Environmental Planning and Management, Vol. 56, No. 4, 2013.

Nnadozie, Kent 'Environmental Regulation of the Oil and Gas Industry in Nigeria' International Environmental Law and Policy in Africa (Chaytor, Beatrice and Gray, Kevin eds.), 2003.

Kuhre, Lee, 'ISO 14001 Certification: Environmental Management Systems: A practical guide for preparing effective environmental management systems' Prentice Hall PTR, Upper Saddle River, NJ, 1995.

Marrewijk, Marcel Van 'Concepts and Definitions of Corporate Social Responsibility and Corporate Sustainability: Between Agency and Communion' Journal of Business Ethics, Vol. 44, 2003.

Stallworthy, Mark 'Sustainability, Land Use and Environment: A Legal Analysis', Cavendish, London, 2002.

Bennett, Martin & James, Peter with Klinkers, Leon (eds.), 'Sustainable Measures: Evaluation and Reporting of Environmental and Social Performance', Sheffield, United Kingdom Greenleaf Publishing, 1999.

Wilson, Mel 'Corporate Sustainability: What Is It and Where Does It Come From?' Ivey Business Journal, 2003.

National Database on Environmental Management Systems, 'Environmental Management Systems: Do they Improve Performance', Environmental Law Institute and University of North Carolina, United States, 2003.

Norton Rose Fulbright, 'Environmental Impact Assessment Case Law Update', 2011.

NSF International, "Environmental Management Systems: An Implementation Guide for Small and Medium-Sized Organizations" (2nd ed.), 2001.

Okafor, Obinna 'The State of Environmental Monitoring in Nigeria and Ways to Improve it: Case Study of Niger Delta' Academia.edu, 2011.

Ogbodo, S. Gozie, 'Environmental Protection in Nigeria: Two Decades after the Koko Incident' Annual Survey of International and Comparative Law, Vol. 15, Issue 1, Article 2, 2009.

Oluduro, Olubayo 'Oil Exploitation and Human Rights Violations in Nigeria's Oil Producing Communities' Afrika Focus, Vol. 25, No. 2, 2012.

Oyekunle A.A, 'Impact of the Petroleum Industry Bill on Deepwater Economics' a paper presented at the 'Nigeria Annual International Conference and Exhibition, 30 July - 3 August 2011, Abuja, Nigeria.

Nwilo, P.C. and Badejo, O.T. 'Oil Spill Problems and Management in the Niger Delta' International Oil Spill Conference Proceedings, Vol. 2005, No. 1, 2005.

Nwilo, P.C. 'Spatial Data Infrastructure: An Imperative in the Management of the Resources of the Niger Delta' Geographic Information Systems International Group.

Role of Economic Instruments in Managing the Environment, Staff Research Paper, Industry Commission, Melbourne, 1997.

Schaltegger, Stefan and Burritt, Roger 'Corporate Sustainability' The International Yearbook of Environmental and Resource Economics-A Survey of Current Issues (Folmer, Henk and Tietenberg, Tom eds.), 2005.

Schaltegger, Stefan 'From Corporate Social Responsibility to Corporate Sustainability' Forum CSR International, 2009.

Schaltegger, Stefan; Burritt, Roger and Petersen, Holger 'An Introduction to Corporate Environmental Management: Striving for Sustainability', Sheffield: Greenleaf (2003).

Pogutz, Stefano 'Sustainable Development, Corporate Sustainability and Corporate Social Responsibility: The Need for an Integrative Framework' Sustainable Social and Ecosystem Stewardship International Conference of

the Greening of Industry Network, Wilfrid Laurier University, Waterloo, Canada, 2007.

Tully, Stephen 'International Corporate Legal Responsibility', Kluwer Law International, 2012.

Dyllick, Thomas and Hockerts, Kai 'Beyond the Business Case for Corporate Sustainability' Journal of Business Strategy and the Environment, Vol. 11, 2002.

United Nation Environment Programme/SustainAbility, 'Engaging Stakeholders', 1998.

United States Environmental Protection Agency, 'Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations', 2000.

Uwem, Ite 'Partnering with the State for Sustainable Development: Shell's Experience in the Niger Delta, Nigeria' Journal of Sustainable Development, Vol. 15, 2007.

Young, William and Tilley, Fiona 'Can Business Move Beyond Efficiency? The Shift Toward Effectiveness and Equity in the Corporate Sustainability Debate' Journal of Business Strategy and the Environment, Vol. 15, Issue 6, 2006.